



**VMA v Republic (Criminal Appeal (Application) E140 of 2024)
[2024] KECA 1561 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1561 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E140 OF 2024
JM MATIVO, JA
NOVEMBER 6, 2024**

BETWEEN

VMA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nakuru (Mubochi Samwel Mukira, J.) dated 4th May, 2023 in HCCRA No. E007 of 2022)

RULING

1. The application before the Court is undated. The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. E007 of 2022, on 4th May, 2023.
2. The applicant, VMA, was arraigned, and tried before the High Court in Criminal Case No. 37 of 2017 at Nakuru with the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*, No. 3 of 2006. He was convicted and sentenced to life imprisonment.
3. The applicant's appeal to the High Court was dismissed on both conviction and sentence. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of 14 days. His present application invokes Rule 4 of the Court of Appeal Rules to enlarge the time to file his appeal.
4. It is the applicant's case that the reason for the delay in filing his appeal on time was because his family agreed to instruct an advocate to pursue an appeal on his behalf which unfortunately did not happen.
5. In response to the application vide written submissions dated 31st October 2024, Mr. Omutelema, Senior Assistant Director of Public Prosecutions has amiably conceded to the leave application pointing to the lengthy sentence of life imprisonment.



- 6. I have considered the application, the undated memorandum of appeal, and the undated supporting affidavit. It is evident that there has been a delay of 1 year in filing the appeal against the judgment of the High Court. The applicant’s position is that the delay was occasioned by the failure by his family to instruct an advocate to file his appeal.
- 7. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
- 8. I have considered that the applicant is imprisoned for life. The reason in support of the application is plausible. I am inclined to exercise my discretion in his favour. I allow the application and direct the applicant to file his notice of appeal within the next 14 days and the memorandum of appeal and the record of appeal within 45 days from today.

DATED AND DELIVERED AT NAKURU THIS 6TH DAY OF NOVEMBER, 2024.

J. MATIVO

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR.

