



**Maina v Republic (Criminal Appeal (Application) E119 of 2024)
[2024] KECA 1543 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1543 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E119 OF 2024
JM MATIVO, JA
NOVEMBER 5, 2024**

BETWEEN

JOSEPH IRUNGU MAINA 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 Naivasha (C. Meoli, J.) dated July 13, 2018 in HCCRA No. 44 of 2015)

RULING

1. The application before the Court is dated July 8, 2024. The main prayer is for leave to be granted to the applicant to appeal out of time against the judgment issued in HCCA No. 44 of 2014, on July 13, 2018.
2. The applicant, Joseph Irungu Maina, was arraigned, and tried before the Senior Resident Magistrate Court in Criminal Case No.324 of 2014 at Engineer with the offence of defilement contrary to Section 8 (1) and 8 (2) of the *Sexual Offences Act* No. 3 of 2006. He was convicted and sentenced to life imprisonment as prescribed by law.
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 he is permitted to file his appeal.
4. It is the applicant's case that because of emerging jurisprudence on mandatory sentences, including life imprisonment being declared unconstitutional, he begs for leave to appeal against his life sentence.
5. In response to the application vide written submissions dated 30th October, 2024, Mr. Omutelema Senior Assistant Director of Public Prosecutions contended that there has been inordinate delay on the



part of the applicant in filing the appeal and that the delay in filing the appeal has not been explained. Consequently, Mr. Omutelema opposes the grant of leave as prayed by the applicant.

6. I have considered the application, the notice of appeal, memorandum of appeal, the supporting affidavit dated 8th July, 2024. It is evident that there has been a delay of almost 6 years in filing the appeal against the judgment of the High Court. Unfortunately, there has been no attempt by the applicant to explain the reasons for his delay in filing his appeal.
7. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew KiplagatChemaringo 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. In applying the principles in *Andrew KiplagatChemaringo vs. Paul Kipkorir Kibet* (*supra*), I am not inclined to exercise my discretion in the appellant’s favour, since no plausible explanation on the delay has been proffered. The sole reason cited by the applicant is that mandatory minimum/mandatory sentences have since been declared unconstitutional. However, the Supreme Court has since clarified the position which erodes the sole ground upon which the applicant relies on. Consequently, the application dated July 8, 2024 is hereby dismissed.

DATED AND DELIVERED AT NAKURU THIS 5TH DAY OF NOVEMBER, 2024.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

