



**Mariera v Republic (Criminal Appeal (Application) E115 of 2024)
[2024] KECA 1558 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1558 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E115 OF 2024
JM MATIVO, JA
NOVEMBER 5, 2024**

BETWEEN

ABNER MARIERA 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 (M. Odero, J.) dated 25th May, 2018 in HCCRA No. 211 of 2014)

RULING

1. The application before the Court is dated 1st July, 2024. The main prayer is for leave to appeal out of time against the judgment issued in HCCA No. 211 of 2014, on 25th May, 2017.
2. The applicant, Abner Mariera, was arraigned, and tried before the Chief Magistrate's Court in Criminal Case No. 118 of 2011 at Nakuru 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 on 28th August, 2014.
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 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 of procedural technicalities. Nevertheless, he argues that his appeal has very high chances of success if heard and determined.
5. In response to the application vide written submissions dated 18th June, 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. It is trite that this Court has unfettered discretion under Rule 4 of the *Court Rules*, to extend time for the doing of any act under the Court Rules. In *Fabir Mohammed v. Joseph Mugambi & 2 Others* Civil Application NAI 332/04 (ur) which was a reference to the full Court the following principles were summed up as follows: -

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: see *Mutiso v Mwangi*, Civil Application No. Nai. 255 of 1997 (ur), *Mwangi v Kenya Airways Ltd* [2003] KLR 486”.

7. I have considered the application and the supporting affidavit sworn on 1st July, 2024 and the respondent’s submissions dated 30th October 2024 in concession of the motion. I have also read the attached memorandum of appeal setting out grounds which, for an intending appellant exercising their undoubted right of a second appeal, cannot be said to be unarguable. I am satisfied that the applicant has met the threshold for the exercise of discretion by this Court. Consequently, I allow the application dated 1st July, 2024 for the extension of time. The notice of appeal shall be filed within 14 days. The memorandum of appeal and record of appeal shall be filed and served within **30 days** from today and the appeal thereafter placed before the court for hearing.

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.

