



REPUBLIC OF KENYA



KENYA LAW
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**Anzaya v Republic (Criminal Application E157 of 2024)
[2024] KECA 1789 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1789 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E157 OF 2024
PM GACHOKA, JA
DECEMBER 6, 2024**

BETWEEN

BENEDICTUS ALAMBO ANZAYA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence from the judgment of the High Court of Kenya at Narok (Bwonwonga, J.) delivered on 28th December 2017 in HCCRA No. 24 of 2016)

RULING

1. The applicant has filed an undated Chamber Summons seeking leave to appeal out of time against his conviction and sentence by the Narok High Court in HCCRA No. 24 of 2016. The applicant faced two charges in Narok CM Criminal Case no. 291 of 2015 as follows: incest contrary to section 20 (1) of the *Sexual Offences Act* and deliberate transmission of HIV contrary to section 26 (1) of the *Sexual Offences Act*. After full trial, the applicant was convicted of both offences and sentenced to life imprisonment.
On appeal, Bwonwonga, J. dismissed his appeal on conviction and sentence hence the present application.
2. The application is supported by the grounds on the face of it and the applicant's supporting affidavit. He seeks leave to appeal out of time for the reason that he was unable to obtain the services of an advocate in good time owing to financial constraints. He annexed his notice of appeal and memorandum of appeal to the application.
3. In its written submissions dated 14th November 2024, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that it did not oppose the application as the sentence meted out was lengthy.



4. Under rule 4 of this Court's Rules 2022, discretion is given to extend time for the doing of any act provided for under the Rules. In *Fahir Mohammed v. Joseph Mugambi & 2 others* [2005] eKLR, this Court summed up the following principles when considering an application invoked in this rule:

“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 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 Appl. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Ltd* [2003] KLR 486, *Major Joseph Mwereri Igweta v Murika M'Ethare & Attorney General* Civil Appl. NAI. 8/2000 (ur) and *Murai v Wainaina* (No 4) [1982] KLR

5. I have considered the reason advanced by the applicant as set out in the application. I have also considered the respondent's submissions, the law as well as the draft memorandum of appeal adduced. I take note that the applicant is unrepresented and has given reasons why he did not file his appeal on time. Whereas the delay is inordinate, I am inclined to exercise my discretion in favor of the applicant after considering the reasons given. I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, the undated application is allowed as follows: the applicant shall file his notice of appeal within 14 days from the date of this order.

Thereafter, the record of appeal shall be filed and served within 30 days.

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

M. GACHOKA C.ARB, FCIARB.

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

