



**Stella v Republic (Criminal Application E167 of 2024)
[2024] KECA 1876 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1876 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E167 OF 2024
A ALI-ARONI, JA
DECEMBER 19, 2024**

BETWEEN

HENRY MAMARIA STELLA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for an extension of time to appeal against the Judgment of the High Court at Kerugoya (L. Njuguna, J.) delivered on 29th September 2023 in HCCRA No. E027 of 2022)

RULING

1. Before the court is an application by way of a notice of motion dated 11th November 2024 seeking an extension of time to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application and the applicant's affidavit dated 11th November 2024, stating that the appellant was tried, convicted, and sentenced to a life sentence for the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act*, in S.O. Case No. 17 of 2018 at the Magistrate's Court at Wanguru; the appellant appealed to the High Court of Kenya at Kerugoya in HCCRA No. E027 of 2022, where the life sentence was substituted with 40-year imprisonment; the appellant had the intention to appeal to this Court but was not supplied with the original trial court record and the High Court judgment to enable him to appeal on time; thus, begs leave of this Court for an extension of time to appeal; the sentence meted out is not only harsh but degrading. It is against the appellant's constitutional rights given the provision of Article 50(2), (p), and (q) of *the Constitution* and other provisions of the law.
3. The State does not oppose the application.
4. I have considered the application, the supporting affidavit, and the State's submissions. The issue for determination is whether the applicant deserves the orders sought. Rule 4 of the Court of Appeal



Rules allows the court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.

5. In *Mungatu vs. Republic (Criminal Application E009 of 2023) [2023] KECA 671 (KLR) (9 June 2023) (Ruling)*, this Court held as follows:

“The principles applicable in an application for extension of time under rule 4 of the Court of Appeal Rules have been the subject of many decisions of this Court. In *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR Ouko J (as he then was) stated as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its’ dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.

In considering the last principle, it must be borne in mind that it is not the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

The Supreme Court of Kenya pronounced itself on 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.”

6. I find that the applicant has satisfactorily explained the reason for the delay in filing his appeal out of time. It is also not lost to the court that the applicant being incarcerated in prison faces challenges accessing the court registry and, hence, the proceedings and judgment. The application is, therefore, allowed. The appeal is to be filed and served within the next 14 days of today’s date.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF DECEMBER, 2024.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

