



**Wamuntho v Republic (Criminal Application E026 of 2024)
[2024] KECA 1816 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1816 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E026 OF 2024
MSA MAKHANDIA, JA
DECEMBER 20, 2024**

BETWEEN

ELISHA OUMA WAMUNTHO APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an appeal out of time arising from the judgment of the High Court of Kenya at Kisumu (Ochieng, J.) dated 19th September 2021 in HCCRA No. 64 of 2019)

RULING

1. Elisha Ouma, (“the applicant”), was arrested, tried, convicted and sentenced to life imprisonment for the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*.
2. Dissatisfied with the trial court’s decision, the applicant mounted a first appeal in the High Court ta Kisumu. However, on 19th September 2021 by Ochieng, J. (as he then was), dismissed the appeal in its entirety. Since then, his attempts to file a Notice of Appeal in this Court has hit headwinds. Nonetheless, he is still desirous of pursuing a second and perhaps last appeal to this Court, hence the instant application.
3. The applicant attributes the delay in filing the appeal within the statutory timelines on such issues as; that the relatives had promised to hire an advocate to prosecute the appeal on his behalf but did not do so. That he has a constitutional right of appeal under Articles 22 and 50 (2) of *the Constitution*, section 379 of the Criminal Procedure Code as well as Rule 4 of this Court’s Rules. That though the delay may appear inordinate he has nonetheless proffered a plausible explanation which the respondent has not controverted. He thus prayed that the application be allowed.



4. I note that though the respondent was served with the application, it did not deem it necessary to file any papers in opposition to the application. Neither did it file written submissions. I would therefore take it that the application is unopposed.

5. In the case of Wanyoike Kariuki vs. Republic, CoA Criminal Application No. E060 of 2024, this Court sitting in Nakuru stated thus with regard to the applications of this nature:

“...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained. A plausible explanation for the delay is the key that unlocks the Court’s flow of discretionary favour. There has to be valid and clear reasons upon which the discretion can be favourably exercisable.”

6. In my view, the applicant has ably demonstrated, the delay and reasons for the delay in filing the appeal. Given the circumstances, in which the applicant operates (in prison), the reasons advanced for the delay are not idle.

7. Accordingly, I allow the application and grant leave to the applicant to file the appeal out of time. This should be within the next forty- five (45) days from the date hereof, failing which leave hereby granted shall automatically lapse.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF DECEMBER, 2024.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a True copy of the original

DEPUTY REGISTRAR

