



REPUBLIC OF KENYA



KENYA LAW
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**Kinyatti v Republic (Criminal Application E129 of 2024)
[2024] KECA 1885 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1885 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E129 OF 2024**

JW LESSIT, JA

DECEMBER 5, 2024

[IN CHAMBERS]

BETWEEN

SAMUEL MWANGI KINYATTI APPLICANT

AND

REPUBLIC RESPONDENT

(Being a Criminal Application under Rule 40 of the Court of Appeal Rules, 2010, arising from the High Court ruling delivered by A. Ndungu, J. on 8th November, 2023 In HCC Misc. Application no. E014 OF 2023)

RULING

1. The applicant, Samuel Mwangi Kinyatti, filed this application under rule 40 of the [Court of Appeal Rules](#), 2010, dated 13th August, 2024. He seeks to be granted leave to appeal out of time. In passing, he mentions that he is a pauper and should not be asked to pay any fees.
2. The application is premised on the grounds in the supporting affidavit sworn by the applicant. He avers that he was convicted of an offence under section 8 (1) and 8 (2) of the [Sexual Offences Act](#) and sentenced to life imprisonment by the Chief Magistrate's Court at Nanyuki. On appeal to the High Court at Nanyuki, his appeal was dismissed by M. Kasango in the judgment dated 17th November, 2017. His application to the High Court for leave to appeal to the Court of Appeal was equally dismissed by A. Ndungu in the ruling dated 8th November, 2023. He avers further that he did not appeal to the Court of Appeal within the stipulated period. The reason he gives for that is that his family was unable to raise lawyers fee to enable him file the appeal.
3. The application is unopposed as I have not seen any response or submissions from the State.



4. On the authority of *Imperial Bank Ltd (in receivership) and Another v Alnasir Popat and 18 Others* [2018] eKLR, this Court stated:

“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; 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 taking into account the last consideration, it must be born in mind that it is not really 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.”

5. And the Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v 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. Applying the principles to this case, the applicant has to give a reasonable and plausible explanation for the delay in filing his appeal on time. In his affidavit in support of this application he avers that his family had promised him that they would raise funds and hire a lawyer to file his appeal and represent him. That after waiting for long he was recently informed that they were unable due to high fees charged by counsels.

7. I have considered the length of the delay. The impugned judgment intended to be appealed was delivered on the on 17th November, 2017. This application was filed on 13th August, 2024. That is a period of 6 (six) years and 10 (ten) months. That period is in my considered view an inordinately long period of delay. It is not a reasonable explanation to claim lack of funds was the cause of the delay. Contextualizing that to the facts, the applicant sat on his right for almost seven years before filing this application. There is nothing he has said to explain what caused him to rise and make this application, to enable the Court understand the real reason for the delay. That cannot be a reasonable or plausible explanation for the length of delay involved in this application. It smacks more of an afterthought informed by the fact his application for leave to file appeal made at the High Court was dismissed. I am not persuaded that the reason given by the applicant has unlocked the flow of discretionary favour to the applicant’s favour.

8. Consequently, the applicant’s undated application is unmerited and the only fate that can befall it is dismissal, which I hereby do.

DATED AND DELIVERED AT NYERI THIS 5TH DAY OF DECEMBER, 2024.

J. LESIIT

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JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR

