



**Mugendi v Republic (Criminal Application E135 of 2024)
[2024] KECA 1895 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1895 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E135 OF 2024
JW LESSIT, JA
DECEMBER 5, 2024**

BETWEEN

FRANCIS FUNDI MUGENDI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against sentence only of the Judgment made in
the High Court of Kenya at Nyeri (Cherere, J.) dated and delivered
on 7th September, 2020 in Criminal Appeal No. 71 of 2019)*

RULING

1. The applicant, Francis Fundi Mugendi, filed this application under rule 40 of the Court of Appeal Rules. By a notice of motion dated 2nd September, 2024, the applicant seeks, inter alia; that this Court be pleased to grant leave to appeal out of time.
2. The applicant stated that he was 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 No. 3 of 2006; that he was aggrieved by the decision of both courts below. He states that on appeal to the High Court, his conviction was upheld but his life sentence substituted with a 15 years sentence however, the period he spent in remand was not considered.
3. The applicant, therefore, seeks that the Court to address the time spent in remand custody pending trial and admit his appeal out of time. He stated that he could not appeal on time since his family could not hire a lawyer for him.
4. The applicant seeks leave to appeal out of time. The applicant has a duty to explain the reasons for the delay to the satisfaction of the Court that would enable the Court exercise its unfettered power in his



favour. 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.”

5. The applicant has explained that the cause of the delay was lack of finances. He explains that he had been sentenced to life imprisonment for a sexual offence contrary to Section 8 (1) as read with 8 (2) of the *Sexual Offences Act*. On appeal to the High Court, the conviction was upheld but the sentence was reduced to 15 years imprisonment. He now wants to appeal to the Court of Appeal.
6. I note that the judgment of the High Court that reduced his sentence was delivered on the 7th September, 2020. The period for the delay is four years. That is an inordinately long period of time. His explanation that he lacked funds to file his appeal is not plausible nor reasonable. I take judicial notice that many inmates file their cases in Courts daily without need for money, most of them seeking leave to proceed as a pauper.
7. I find that the application is an afterthought. I am not persuaded that I should exercise my discretion in favour of the applicant.
8. The result is that the application is not merited and the application is dismissed.

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

J. LESIIT

JUDGE OF APPEAL

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

Signed

Deputy Registrar

