



**Mugo v Republic (Criminal Appeal (Application) E137 of 2024)
[2024] KECA 1893 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1893 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL (APPLICATION) E137 OF 2024**

**JW LESSIT, JA
DECEMBER 5, 2024**

BETWEEN

ANTHONY MWANGI MUGO APPLICANT

AND

REPUBLIC RESPONDENT

(Being a Criminal Application under Rule 40 of the Court of Appeal Rules, 2010, arising from the trial Court Judgment in S. O. Case No. 22 of 2019)

RULING

1. The applicant, Anthony Mwangi Mugo, filed this application under rule 40 of the Court of Appeal Rules, 2010, dated 6th September, 2024. He seeks to be granted leave to appeal out of time and as a pauper. Further, that any other order the Court may deem fit.
2. The application is premised on the grounds that the applicant was convicted of an offence under section 8 (1) and 8 (2) of the Sexual Offences Act. The Principal Magistrate’s Court sentenced him to life imprisonment. On appeal to the High Court, the conviction was upheld but the sentenced reduced to 40 years imprisonment in its judgment dated 24th October 2023. He states 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. This application is supported by the affidavit sworn by the applicant. He stated that there was an annexed draft memorandum of appeal but the same is missing.
4. The application is unopposed as I have not seen any response or submissions from the State.



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

“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.”

6. 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.”

7. Applying the principles applicable 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.

8. I have considered the length of the delay. The High Court judgment was delivered on the on 24th October, 2023. That is a period of 13th 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. It smacks more of an afterthought informed by the fact the applicant’s life sentence was substituted by a determinate sentence of 40 years. I am not persuaded that the reason given has unlocked the flow of discretionary favour.

9. 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.

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J. LESIIT

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

