



REPUBLIC OF KENYA



**Muriithi v Republic (Criminal Application E153 of 2024)
[2024] KECA 1875 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1875 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E153 OF 2024**

JW LESSIT, JA

DECEMBER 5, 2024

BETWEEN

JOHN MAINA MURIITHI APPLICANT

AND

REPUBLIC RESPONDENT

(Being a criminal application seeking leave to appeal out of time to court of appeal pursuant to rules 40 of the Court of Appeal Rules and any other applicable provision of the law against the decision of the High Court at Nyeri delivered by Kizito Magare, J. on 30 th July 2024 in HCCR A. No. E022 of 2024)

RULING

1. The applicant, John Maina Muriithi, filed this application under rule 40 of the Court of Appeal Rules. By a notice of motion dated 2nd September, 2024, the applicant seeks that this Court be pleased to grant leave to appeal out of time and as a pauper.
2. The application is supported by an affidavit sworn by the applicant.
The applicant avers 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 20 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 afford to hire a lawyer for him.



4. The applicant seeks leave to appeal out of time. The Court’s discretionary power is unfettered. The applicant has a duty to explain the reasons for the delay to the satisfaction of the Court. The Supreme Court of Kenya pronounced itself on 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. I note that the judgment of the High Court that reduced his sentence was delivered on the 30th July, 2024. The application was itself filed on 14th October, 2024. The period of the delay is two and a half months. That is not inordinately long by any standard. His explanation that his family lacked funds to file his appeal is plausible nor reasonable in the circumstances.

6. I find that the application merited. I am persuaded to exercise my discretion in favour of the applicant.

7. The result is that the application filed on October 14, 2024 is allowed as prayed. The applicant is granted leave to file his appeal out of time and as a pauper. The registry is directed to prepare the record of appeal and serve it upon the applicant and the respondent herein.

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

