



**Cheruiyot v Republic (Criminal Application E174 of 2024)  
[2024] KECA 1745 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1745 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E174 OF 2024  
MA WARSAME, JA  
DECEMBER 4, 2024**

**BETWEEN**

**LEONARD KIPYEGON CHERUIYOT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file a notice of appeal, against the judgment of the High Court at Bomet (Lagat-Korir, J.) dated 30th September 2021, in HCCRA No. 001 OF 2020)*

**RULING**

1. The applicant, (Leonard Kipyegon) was convicted and sentenced to life imprisonment for defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* in Criminal Case No. 70 of 2019 at Bomet. His appeal against conviction and sentence was dismissed by the High Court on 30<sup>th</sup> September 2021. However, he failed to lodge his notice of appeal within the stipulated time and has filed the present application dated 10<sup>th</sup> July 2024 seeking to enlarge the time to appeal
2. The applicant contends that he was not able to appeal on time because he was not supplied with the Court's Judgment. Rule 4 of this Court's Rules allows the Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorised or required by the Rules. In *Leo Sila Mutiso vs. Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.



3. The respondent has through written submission conceded to the application and has submitted that given the long sentence imposed by the High Court, the applicant should be given an opportunity to appeal.

4. In my view, the delay of almost 3 years is inordinate and no material has been placed before the court to demonstrate that the applicant made any attempts to obtain the judgment.

Consequently, having found no plausible explanation for the delay, I find no merit in the application and dismiss the same.

**DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF DECEMBER, 2024.**

**M. WARSAME**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

