



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Republic (Criminal Application E169 of 2024)
[2024] KECA 1744 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1744 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E169 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

JOSEPH MUNGAI KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal, against the judgment of the High Court at Naivasha (Olel J.) dated 31st July 2023, in HCCRA No. 12 OF 2018)

RULING

1. The applicant, (Joseph Mungai) was convicted of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* and sentenced to life imprisonment in Criminal Case No S.O 8 of 2018 at Naivasha. The High Court, (Macharia, J.) upheld the decision of the trial court in a judgment dated 3rd February 2022.
2. The applicant now wishes to appeal that decision out of time and has filed the instant application dated 16th August 2024 seeking leave to do so. The applicant in his supporting affidavit avers that the appeal has high chances of success and faults the learned Judge for failing to consider his defence and mitigation and for meting out a harsh sentence whereas the ingredients of the offence were not conclusively proved. He also seeks that the duration of one year spent in custody be counted as part of his sentence under Section 333(2) of the *Criminal Procedure Code*.
3. I have considered the application, memorandum of appeal and the supporting affidavit. It is evident that there has been a delay of two years and 5 months in filing the appeal against the judgment of the High Court.



4. As was stated in *Fakir Mohamed v Joseph Mugambi & 2 others*, Civil Application No Nai. 332/04 (unreported) on the discretion of this Court in a Rule 4 application:

“ As it is unfettered, there is no limit to the number of actors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted; the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits; the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustively factors. ”

5. With the above principles in mind, I note that despite stating reasons why his appeal has high chances of success, the applicant herein has not provided one single reason for the delay in filing the notice of appeal. Consequently, I find no basis to exercise my discretion in favour of the applicant and dismiss the application accordingly.

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

M. WARSAME

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JUDGE OF APPEAL

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

Signed

Deputy Registrar

