



**Maroro v Republic (Criminal Application E153 of 2024)
[2024] KECA 1770 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1770 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E153 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

ERIC SIRO MARORO 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. E 016 OF 2021)

RULING

1. The applicant, (Eric Siro Maroro) has filed the instant application seeking leave to file a notice of appeal out of time against the judgment of the High Court issued in HCCRA No. 016 of 2021 on 31st July, 2023 which dismissed his appeal against conviction and sentence of 20 years for rape contrary to Section 3(1) (a), (b) as read with Section 3(3) of the *Sexual Offences Act*.
2. The applicant blames the delay on the failure of the High Court to furnish him with a copy of the judgment and avers that his appeal has High Chances of success as per the annexed draft Memorandum of Appeal, which faults the High Court for failing to find that; the ingredients of the offence were not proved, that the sentence was excessive and that his defence was not considered.
3. The respondent in its submissions dated 14th November, 2024 contend that even though the delay is inordinate, they do not oppose the application since the sentence is lengthy.
4. The decision on whether to extend time for appealing is essentially discretionary taking into account length of delay and reason for the delay. (See *Leo Silla Mutiso vs Rose Hellen Wangari* Nairobi Civil Application No 251 of 1997) It is clear therefore that the court has the ultimate discretion in allowing or disallowing an application for extension of time as long as it deems the terms thereof as just. Further, a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court, and the court needs to consider whether there is a reasonable reason for the delay. In addition, the court



needs to consider whether the application has been brought without undue delay, and due regard must be taken as to whether there will be any prejudice suffered by the respondents if the extension is granted;

5. The delay in filing the instant application in this case is about 13 months. The applicant has not provided any proof of his request for the impugned judgment or that he made efforts to kick-start the process of appeal.
6. Consequently, having found no plausible explanation for the delay, I decline to exercise my discretion in favour of the applicant and dismiss the application with no order as to costs.

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

