



**Kongoto v Republic (Criminal Application E198 of 2024)
[2024] KECA 1767 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1767 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E198 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

JOSEPH KONGOTO 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 (Muya, J.) dated 19th September 2016 in HCCRA No. 46 OF 2015)

RULING

1. Before me is an undated application seeking leave to appeal out of time against the judgment issued in HCCRA No. 46 of 2015 delivered on 19th September 2016 wherein the applicant 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
2. The applicant blames the delay on the failure of the High Court to furnish him with a copy of the judgment.
3. The court has settled on the matters which should be taken into consideration when the court was called upon to exercise its discretion under Rule 4. Those matters, as was stated in the case of Leo Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997, include:

“... 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.”
4. By the time the applicant filed the present application for extension of time, the period which had lapsed was almost 8 years. In my view this delay is inordinate and the explanation that the delay was occasioned by the Court is unsubstantiated. Furthermore, there is no indication whatsoever that the



applicant intended to appeal or attempted to obtain the judgment of the Court. The appeal is simply an afterthought. Consequently, the application lacks merit and is dismissed.

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

