



REPUBLIC OF KENYA



KENYA LAW
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**Njenga v Republic (Criminal Application E058 of 2024)
[2024] KECA 1771 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1771 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E058 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

JAMES KABIRU NJENGA 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 (Meoli, J.) dated 18th July, 2017 in HCCRA No. 36 OF 2015)

RULING

1. The applicant, (James Kabiru) was convicted of defilement contrary to Section 8(1) as read with Section 8(2) of the 23 *Sexual Offences Act* and sentenced to life imprisonment in Criminal Case 902 of 2007 at Naivasha. The High Court, (Maraga, J. and Mwilu, J. as they were then) upheld the decision of the trial court in a judgment dated 19th March 2010 sentencing him to life imprisonment.
2. The grounds as stated on the face of the application and supported by the supporting affidavit sworn by the applicant
are that he was not supplied with the trial court's records and the trial court's judgment to enable him to file the intended appeal.
3. In opposition to the application the respondent filed written submissions and submitted that the delay was inordinate and had not been explained.
4. In my view the applicant's explanation for the delay of more than 14 years in filing the notice of appeal is not plausible. The fact that there is a judgment from the 1st appellate Court implies that the applicant was supplied with the requisite proceedings and judgment from the trial court. Furthermore, I find that no evidence of a letter requesting for the requisite certified copies of the proceedings and the judgment.



I am guided by the dicta in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, where it was held that:

“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 the 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. Consequently, 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 TDAY OF DECEMBER, 2024

M.WARSAME

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JUDGE OF APPEAL

I certify that this is a True copy of the origin

Signed

DEPUTY REGISTRAR

