



**SM v Republic (Criminal Application E151 of 2024)
[2024] KECA 1764 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1764 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E151 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

SM 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 (Ong’udi, J.) dated 20th June, 2024 in HCCRA No. E020 OF 2022)

RULING

1. The applicant, was convicted of incest contrary to section 20(1) of the *Sexual Offences Act* and sentenced to twenty (20) years in Criminal Case No. 14 of 2019 at Naivasha. His appeal against conviction and sentence was dismissed by the High Court. However, he failed to lodge his notice of appeal within the statutory 14 day period as required by the Rules of this Court. As a result the applicant seeks to file an appeal out of time.
2. The reason for delay, as stated in the applicant’s affidavit is that he was not supplied with the High Court file on time to enable him to lodge his appeal. He avers that his intended appeal has merit and has high chances of success.
3. The respondent through its written submissions contends that it does not oppose the appeal but points out that the delay is inordinate.



4. The matters which should be taken into consideration when the court is called upon to exercise its discretion in instances such as this were 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.”

5. The delay in this case in filing this application is about two months. Given the exigencies of confinement especially where the applicant acts in person in pursuing his appeal. I find that a delay of 2 months is not inordinate and the applicant’s explanation is plausible.

6. I have also perused the Draft Memorandum of Appeal and find that it raises grounds for consideration by the Court.

7. Consequently, the application is allowed with no orders to cost.

I direct the Notice of appeal to be filed within 30 days.

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

