



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwova v Republic (Criminal Application E003 of 2021)  
[2023] KECA 405 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KECA 405 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E003 OF 2021  
MSA MAKHANDIA, JA  
MARCH 31, 2023**

**BETWEEN**

**DENNIS MUNYASYA MWOVA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file notice of appeal and file appeal out of time in an intended appeal against a judgment of the High Court of Kenya at Nairobi (Kimaru, J.) dated 29th January 2019 in Nairobi HCCRA No. 9 of 2019)*

**RULING**

1. The applicant, Dennis Munyasia Mwosa was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. After full trial, he was convicted on the main charge and sentenced to fifteen (15) years' imprisonment. Aggrieved by his conviction and sentence, the appellant filed an appeal in the High Court which appeal was dismissed by Kimaru, J. (as he then was).
2. However, having not filed the notice and the record of appeal within the stipulated period of time of fourteen days, the applicant has sought that the time to lodge the notice and record of appeal be extended. He explains that the delay in filing the notice of appeal was occasioned when he discovered that the advocate who was representing him was having an affair with his wife, hence, he was constrained to discharge his services. That after the termination of the services of his advocate, he was not aware of what was happening in court. He does not ever recall ever being informed of his rights of appeal after the delivery of the judgment and that he was not aware of the processes involved in instituting an appeal to this Court which has timelines, until when his mother met with an advocate from the firm of Mohammed Muigai, LLP, who offered to represent him on pro bono basis and explained to her the required procedure. The respondent has indicated that it is not opposed to the application.



3. The extension of time is provided for under rule 4 of the [Court of Appeal Rules](#) in terms, inter alia:

“The Court may, on such terms as it thinks just, by order extend the time limited by these rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these rules, whether before or after the doing of the act, and a reference in these rules to any such time shall be construed as a reference to that time as extended.”

4. In considering an application for extension of time, the court must be alive to several key issues in exercise of its discretion namely:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- vi. Whether the application has been brought without undue delay

5. Ideally, the applicant ought to have filed his appeal by February 13, 2019, and I take note that upon realizing that there was delay in filing for reasons already noted above, he filed this application on December 31, 2020. Given his circumstances, including the constraints he has alluded to, and the fact that the respondent has not opposed the motion, I find that the respondent will not suffer prejudice if the time for filing and serving the notice of appeal is extended. In my considered view, the period of nearly two years delay, though long, the cause has been explained and I find the explanation plausible.

6. Consequently, I allow the application dated December 31, 2020 with the result that the notice of appeal be and is deemed as having been duly lodged and served. Thereafter, other procedures to follow in accordance with the law as to timelines starting from the date of delivery of this ruling.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH, 2023.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

