



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutia v Republic (Criminal Application E001 of 2023)  
[2023] KECA 560 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 560 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E001 OF 2023  
MSA MAKHANDIA, JA  
MAY 12, 2023**

**BETWEEN**

**GEORGE K MUTIA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to lodge an appeal from the judgment of the High Court of Kenya (Limo, J.) dated 1st November, 2022 in Kitui HCCRA No. E018 of 2022)*

**RULING**

1. George K Mutia, “the applicant”, had been convicted for the offence of indecent act with a child by the trial court. On appeal, Limo, J on November 1, 2022 set aside the conviction for indecent act and in its place under section 354 of the Criminal Procedure Code entered a conviction against the appellant for the offence of defilement contrary to section 8(1) as read with section 8(2) of the Sexual Offences Act and sentenced him to 20 years imprisonment. Thereafter, differences arose between the applicant and his then counsel. By the time the differences were resolved, time limited for the filing of the notice of appeal under the Court of Appeal Rules being fourteen (14) days from the date of the judgment had long expired.
2. The applicant has by a notice of motion dated January 5, 2022 sought that the time to lodge the notice of appeal be extended.
3. The Office of the Director of Public Prosecutions when served with the application in a letter dated March 13, 2023 addressed to the Registrar of this Court, stated: “This is to inform you that the State is not opposed to the application for leave to file the appeal out of time.” Accordingly, the application is unopposed. That notwithstanding, I still need to be persuaded in order to exercise my unfettered discretion to extend time.



4. The extension of time is provided for under rule 4 of the Court of Appeal Rules which is 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.”

5. In an application for extension, the court must be alive to several key considerations in exercise of its discretion, key being:

- 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; and
- vi. Whether the application has been brought without undue delay.

See Salat vs Independent Electoral & Boundaries Commission & 7 Others [2014] KLR-SCK.

6. Ideally, the applicant ought to have filed his notice of appeal on November 13, 2022. I note that upon realizing that there was delay in filing of notice of appeal, the applicant acted with despatch and filed this application on January 5, 2023. Given the circumstances, including the differences he has alluded to, and the fact that the respondent does not oppose the application, I am inclined to allow the application.

7. Consequently, I allow the application. The applicant shall within the next fourteen (14) days from the date hereof, file and serve on the respondent the notice of appeal.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2023.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

