



REPUBLIC OF KENYA



KENYA LAW
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**JWS v Republic (Criminal Application E297 of 2022)
[2023] KECA 1079 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1079 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E297 OF 2022
M NGUGI, JA
SEPTEMBER 22, 2023**

BETWEEN

JWS APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application seeking waiver of fees, extension of time to file notice of appeal out of time and for the notice of appeal to be deemed as properly filed from the Judgment of the High Court of Kenya at Bungoma, (Kemei, J) dated 11th October, 2022 in HCCRA NO. 103 OF 2020)

RULING

1. In his application dated November 24, 2022, the applicant seeks leave for waiver of fees and for extension of time to file his notice of appeal. He also prays that his notice of appeal be deemed as properly filed.
2. The reasons advanced for the application are that he cannot raise fees for preparation of the record of appeal; his family members have abandoned him; and he has never received any assistance from outside the prisons since his arrest and conviction.
3. In submissions dated July 24, 2023, J. Busienei, Senior Principal Prosecution Counsel, observes that the applicant was convicted of defilement and sentenced to 20 years imprisonment by the Chief Magistrate's Court in Kimilili. He does not oppose the application for waiver of fees, only noting that the application should have been filed in the High Court. The respondent does not address the application for extension of time.
4. I note that, from his notice of appeal dated November 8, 2022, the applicant's appeal to the High Court, being Criminal Appeal No 103 of 2020, was dismissed by the High Court in Bungoma (Kemei, J) on 11th October, 2022. While there has been a delay in filing the appeal, which ought to have been



filed within 14 days from October 11, 2022 pursuant to Rule 61 of the *Court of Appeal Rules* 2022, the delay is not inordinate.

5. With respect to the prayer for waiver of fees, since the applicant is not required to meet fees for the preparation of the record of appeal, which is prepared by the High Court upon filing of the notice of appeal, the application for waiver of fees is unnecessary.
6. I accordingly allow the application for extension of time. The notice of appeal dated November 8, 2022 is deemed as duly filed.

DATED AND DELIVERED AT KISUMU THIS 22ND DAY OF SEPTEMBER, 2023.

MUMBI NGUGI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

