



**Ongera v Republic (Criminal Application E001 of 2020)
[2022] KECA 749 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KECA 749 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E001 OF 2020**

PO KIAGE, J

MAY 27, 2022

BETWEEN

ALFRED BOGONGO ONGERA APPLICANT

AND

REPUBLIC RESPONDENT

(Application from a judgment of the High Court of Kenya at Nyamira (E. N. Maina, J.) delivered on 29th March, 2019 in HCCRA No. 42 of 2016)

RULING

1. The applicant, Alfred Bogongo Ongera, who is serving a term of life in prison upon conviction under section 8(1) as read with 8(c) of the [Sexual Offences Act](#), prays for leave to file an appeal out of time against the judgment of the High Court of Kenya (E. N. Maina, J.) by which his first appeal was dismissed on 29th March, 2019. He prays further that the notice of appeal already lodged be deemed as duly filed.
2. On the face of the motion and in the supporting affidavit and submissions filed by his learned advocates Ms. Bruce Odeny & Company Advocates, the applicant indicates that following his sentence he was incarcerated and lost contact with his relatives who had promised to instruct an advocate but failed to do so. He finally was put in touch with his current counsel but by then time under the Rules for filing the notice of appeal had elapsed. He states that the delay was not deliberate.
3. The respondent by written submissions dated 19th July, 2021 under the hand of learned Prosecution Counsel Ligami Shitsama, is not averse to the grant of the application and urges that the applicant be accorded the benefit of doubt.
4. I have considered the application. it is erroneously indicated as brought under Rule 62 of the [Court of Appeal Rules](#) but I will deal with it under Rule 4 which is the applicable rule donating to me jurisdiction to extend time at my free and unfettered discretion. I think that the reasons proffered are plausible and,



give the inhibitions faced by the applicant as a man under incarceration with ability to freely pursue legal redress severely curtailed, it is only fair and just that I should grant the time extension sought.

5. In the result, the application is allowed and the notice of appeal be and is hereby deemed as duly filed.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF MAY, 2022

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

