



**Muhula v Republic (Criminal Appeal (Application) E277 of 2022)
[2023] KECA 1455 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1455 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL (APPLICATION) E277 OF 2022
JM NGUGI, JA
NOVEMBER 24, 2023**

BETWEEN

GEORGE WILLIAM MUHULA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the judgment of the High Court of Kenya at Siaya (Aburili J.) delivered on 29th October, 2019 in HCCRA No. 93 of 2017)

RULING

1. The applicant herein was convicted of defilement under Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) and sentenced to life imprisonment by the Principal Magistrate Court at Siaya on 5th September 2017.
2. He was aggrieved by the conviction and sentence and appealed against both to the High Court sitting in Siaya. The High Court dismissed his appeal on conviction in a judgment on 29th October, 2019. The applicant, however, had limited success in his appeal on sentence. The High Court, relying on the emerging jurisprudence on the unconstitutionality of mandatory minimum sentences in the [Sexual Offences Act](#), set aside the sentence of life imprisonment. Instead, the High Court adopted resentencing hearing and permitted the applicant to mitigate. The High Court also sought and received a social inquiry report from the Siaya County Probation Officer. Thereafter, in a ruling delivered on 25th February, 2020, the High Court re-sentenced the applicant to sixty (60) years in prison.
3. The applicant is further aggrieved by the decision of the High Court and is desirous to appeal. He lodged a Notice of Appeal which was received in this Court's registry on 6th October 2022. The Notice of Appeal is, quite clearly way out of time. Consequently, the applicant has filed the present application dated 29th August, 2022 seeking for leave to file out of time and for the filed Notice of Appeal to be deemed to be regularly filed.



4. Rule 4 of the Court of Appeal Rules governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorised or required by the Rules. In *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: 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 respondent has graciously conceded to this application remarking that given the long sentence imposed by the High Court and our emerging jurisprudence, it is in the interest of justice that the applicant be given a final opportunity to have his appeal considered by this Court.

6. The applicant blames his incarceration and lack of familial support for the delay. Although the period of delay is long – a little more than two years delay – the concession by the respondent coupled with the long sentence imposed (60 years imprisonment) tugs at the Court’s heartstrings. I am, therefore, inclined to exercise discretion on behalf of the applicant. I hereby allow the application dated 29th August, 2022.

7. The undated Notice of Appeal which was received in the Court registry on 6th October, 2022 is deemed as duly filed. The Record of Appeal shall be filed within 60 days hereof and the appeal thereafter placed before the Court for hearing.

8. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF NOVEMBER, 2023.

JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

