



**Gathano v Republic (Criminal Application E193 of 2024)
[2024] KECA 1727 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1727 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E193 OF 2024
MA WARSAME, JA
DECEMBER 4, 2024**

BETWEEN

STEPHEN KIMARI GATHANO APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file a notice of appeal, against the judgment of the High Court at Narok (Gikonyo, J.) dated 26th November 2020 in HCCRA No. 12 OF 2020)

RULING

1. The applicant has filed an undated application in person, seeking an order for extension of time to enable him to file an appeal out of time. From the grounds stated in the application and a supporting affidavit sworn by the applicant, he intends to appeal against the judgment of Gikonyo, J. delivered on 26th November 2020. He is aggrieved by the court’s decision to uphold his conviction for defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act and the enhancement of his sentence from 15 years imposed by the trial court to a 30 year sentence.
2. The applicant has proffered two reasons for the delay of about four years in bringing the instant application. First, is that he was not supplied with the High Court Judgment and second, he was relying on his relatives who faced financial constraints in obtaining legal representation for him.
3. The respondent is not opposed to the application and contends that though the delay is inordinate, the sentence meted out is lengthy and consequently the applicant should be allowed to ventilate his appeal.
4. In determining the matter, I am guided by the dicta in Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR, where it was held that:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for the



delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

5. Whereas the applicant is entitled to legal counsel, he has not satisfactorily explained why he went to slumber for almost four years. We note that he is acting in person, however there are no costs associated with filing a notice of appeal by a person who is serving a sentence. All that is required is to give notice of the intention to appeal within 14 days. Again, the contention that he was not supplied with a copy of the judgment remains unsubstantiated.
6. Consequently, I find the delay inordinate and decline to exercise my discretion in favour of the applicant and dismiss the application with no order as to costs.

DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF DECEMBER, 2024.

M. WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

