



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mutua v Republic (Criminal Miscellaneous Application
E026 of 2025) [2025] KEHC 11155 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL MISCELLANEOUS APPLICATION E026 OF 2025**

RC RUTTO, J

JULY 22, 2025

BETWEEN

MORIS MUTATI MUTUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is a Notice of Motion application dated 14th February 2025, brought under certificate of urgency by the applicant, Morris Mutati Mutua. The applicant seeks the following orders:
 - a. That this Honourable Court be pleased to extend time to file an appeal out of time;
 - b. That the applicant be granted leave to file a Notice of Appeal and a Memorandum of Appeal out of time;
 - c. That the costs of this application be provided for.
2. The application is premised on the grounds set out on its face and is supported by the affidavit sworn by the applicant on the same date. The applicant avers that he has been in custody at Kamiti Maximum Security Prison serving a sentence following his conviction for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*.
3. The applicant states that he instructed his advocate to file a Notice of Appeal and Memorandum of Appeal on his behalf. That although the advocate prepared the necessary documents, he failed to file them within the prescribed time. That the applicant only became aware of this omission after his relatives made inquiries and discovered that no appeal had been lodged.
4. The applicant contends that his intended appeal has high chances of success and that it is in the interest of justice that he be allowed to ventilate his appeal before this Court. He urges the Court not to punish him for the mistakes or omissions of his advocate.



5. The respondent, upon being served with the application, indicated that it does not oppose the same.
6. To ably determine this application, it is imperative to appreciate the background so far. The applicant was initially charged, tried, convicted and sentenced to life imprisonment by the trial court for committing the offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act*. Aggrieved by both the conviction and sentence of the trial court, he filed an appeal to the High Court being HCCRA No. E008 of 2023, *Morris Mutati Mutua v Republic*. This appeal was heard and determined via a judgment rendered on 15th January 2025. The High Court upheld the conviction but substituted the life sentence with a term of twenty-five (25) years imprisonment.
7. The applicant was duly informed of his right to appeal to the Court of Appeal within fourteen (14) days. It is worth emphasizing that upon delivery of its judgment on 15th January, 2025, this Court (High Court) became functus officio on the matter. The applicant's recourse, if any, now laid with a higher court, to wit, the Court of Appeal. Consequently, a jurisdiction question emerges which this Court has to determine. Can the High Court extend time for a party to file an appeal to the Court of Appeal?
8. The applicable legal framework is Rule 61(1) of the Court of Appeal Rules 2022, which provides as follows;

“A person who desires to appeal to the Court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision,…”
9. While this Rule sets the time limit for filing a Notice of Appeal, Rule 4 of the same Rules, grants the Court the discretion to extend time for the doing of any act authorized or required by the Rules, including the filing of a Notice of Appeal. The fundamental question then is which is the court that is granted the power to extend time under Rule 4 of the Court of Appeal Rules, 2022.
10. The answer is to be found in Rule 2 which defines what the “Court” is thus:

“Court” means the Court of Appeal and includes a division thereof and a single judge exercising any power vested in the judge when sitting alone;”

Thus, the Court with powers to extend time is the Court of Appeal and not any other court such as this High Court.
11. Turning to the current application, the Applicant seeks an extension of time to file both a Notice of Appeal and a memorandum of appeal, after the High Court's appellate decision was rendered on 15th January 2025. I have noted that the Respondent upon being served did not oppose the application. This Court was taken a back with the Respondent's submission. Such an enormous derogation from the law by the applicant should ordinarily prick the respondent to challenge the same.
12. This Court lacks the requisite jurisdiction to invoke the discretionary powers of the Court of Appeal, I find that the application before me is incompetent and is for striking out, which I hereby do.
13. I do make the following orders;
 - a. The Notice of Motion dated 14th February 2025 is hereby struck out for being incompetent and for lack of jurisdiction.
 - b. There shall be no order as to costs.



c. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 22ND DAY OF JULY 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Appellant

.....Respondent

Selina Court Assistant

