



REPUBLIC OF KENYA



**KENYA LAW**  
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**Avuke v Republic (Criminal Application E036 of 2025)  
[2025] KECA 1674 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1674 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E036 OF 2025  
MA WARSAME, JA  
OCTOBER 21, 2025**

**BETWEEN**

**JOSEPH LOBEI AVUKE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application to for extension of time to file an appeal against the judgment of the High Court at Nakuru (Nzioka, J.) delivered on 24th November 2023 in HCCRA NO. E80 OF 2023)*

**RULING**

1. The applicant has filed the instant application dated 15th March 2025 seeking extension of time to file a notice of appeal out of time under Rule 4 of the *Court of Appeal Rules*. The applicant seeks to challenge the judgment delivered on 24<sup>th</sup> November 2023 by the High Court dismissing his appeal against a conviction and sentence of twenty (20) years for the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*.
2. Rule 61 (1) of this court's Rules provides that a person who desires to appeal to the Court shall give notice in writing, within fourteen days after the date of that decision. Consequently, the applicant should have filed his notice of appeal by 8<sup>th</sup> December 2023 if he intended to appeal. The current application was filed on 15th March 2025, approximately 1 year and 3 months after the judgment was delivered.
3. The sole reason for the delay as stated on the face of the application is that the High Court judgment was not availed to him and consequently, he could not file his appeal within the stipulated time.
4. The respondent through written submissions contended that it did not oppose the application given that the sentence meted out was lengthy and this was his first appeal.



5. The court has settled on the matters which should be taken into consideration when the court was called upon to exercise its discretion. Those matters, as was stated in the case of *Leo Sila Mutiso v Helen Wangari*, (NRB) Civil Application No. 251 of 1997, include:

“... 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.”

6. While a delay of approximately 15 months is substantial and cannot be characterized as short, it must be viewed in the proper

context especially in the circumstances of incarceration, where access to legal documentation depends largely on prison administration and the court processes is beyond an applicant’s control.

7. The applicant’s explanation, presents a plausible and reasonable account for the delay. The respondent has not identified any specific prejudice that would be suffered if this application is granted. Indeed, the respondent does not oppose the application.

8. In the end, I am satisfied that sufficient reason has been shown to warrant the exercise of this Court’s discretion in favour of the applicant. The application is accordingly allowed.

9. I direct that the applicant shall file his notice of appeal within sixty (60) days from the date of this ruling

**DATED AND DELIVERED AT NAKURU THIS 21<sup>ST</sup> DAY OF OCTOBER, 2025 M.WARSAME**

.....  
**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

