



REPUBLIC OF KENYA



KENYA LAW
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**Wanjala v Republic (Criminal Application E014 of 2025)
[2025] KECA 1656 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1656 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E014 OF 2025
LK KIMARU, JA
OCTOBER 15, 2025**

BETWEEN

FRED WANJALA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time from the Judgment of the High Court of Kenya at Bungoma (Ali Aroni, J) Dated 20th November, 2016 in HCCRA No. 25 of 2013)

RULING

1. Fred Wanjala, the applicant herein was convicted by the trial Magistrate's court at Kimilili of the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. He was sentenced to serve life imprisonment. His appeal to the High Court at Bungoma was unsuccessful. The applicant wishes to exercise his last appeal to this Court.
2. However, he did not lodge the notice of appeal in time. He has made an application to this Court to be granted leave to appeal out of time. He explains that his failure to lodge the notice of appeal in time was not of his making but due to the fact that, being incarcerated, he was not supplied with the certified typed copies of the proceedings and judgment in time to enable him lodge his second appeal to this Court. He was not in a position to follow up the typing of the proceedings by the Court's Registry. The applicant urged that the Court should not put undue weight to the period of delay but on the fact that he should be given a chance to exercise his constitutional right of appeal.
3. The application is opposed. The respondent pointed out that there was inordinate delay between the time the High Court dismissed the applicant's first appeal and his application to this Court to be granted leave to appeal out of time. The period of delay referred to is nine (9) years. The respondent urged the Court to disallow the application.



4. This Court has carefully considered the application and the rival submissions filed. Rule 4 of the Court of Appeal Rules grants this Court unfettered discretion to extend time for any steps to be taken in the appeal, notwithstanding the time limited by the Rules. Over time, this Court has come up with principles to guide it when determining such applications. It includes, inter alia, the length of delay, the reason for delay and whether the respondent will be prejudiced.
5. The applicant's appeal before the High Court was dismissed on 20th November, 2016. The applicant filed the present application on 26th February, 2025. There is a lapse of a period of more than Eight (8) years. The applicant explains the reason for the delay in mounting the appeal in time to the fact that he was not availed typed copies of the proceedings and Judgment of the impugned decision in time. This Court is not convinced by this explanation. In normal circumstances, this Court will not refuse a convict's application to exercise his right of appeal.
6. In this application, the delay of more than eight (8) years is so inordinate that it was clearly a case of inexcusable indolence on the applicant's part. This Court agrees with the respondent that the period of delay militates against this Court issuing the order craved for by the applicant for extension of time.
7. The application lacks merit and is hereby dismissed

DATED AND DELIVERED AT KISUMU THIS 15TH DAY OF OCTOBER, 2025.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original

Deputy Registrar.

