



**Ongera v Republic (Criminal Application E018 of 2025)  
[2025] KECA 1715 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1715 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E018 OF 2025  
MSA MAKHANDIA, JA  
OCTOBER 21, 2025**

**BETWEEN**

**DOMINIC MOKAYA ONGERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application seeking for extension of time to appeal from  
the Judgment of the High Court of Kenya at Nyamira, (Nangillah,  
J.) dated 13th day of October, 2015 in HCCRA No. 2 of 2015)*

**RULING**

1. Dominic Mokaya, the applicant herein, was tried, convicted and sentenced to 30 years imprisonment for the offence of Defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#).
2. Dissatisfied with the trial court's decision, the applicant filed an appeal in the High Court of Kenya at Nyamira challenging both the conviction and sentence. However, the same was dismissed on 13<sup>th</sup> day of October, 2015 by Nangillah J. Since then, the applicant has tried filing a notice of appeal in this Court but no response has been forthcoming. In other words, the applicant is saying that he has tried to lodge a notice of appeal severally but in vain. He has exhibited documents to demonstrate his failed attempts. He also depones that he did not appeal on time because his relatives promised to hire a counsel for him but failed to do so. Finally, he could also not appeal on time because he was not furnished with the high court judgment.
3. I note that though the respondent was served with the application, it has to date not filed any papers in opposition to the application. Similarly, much as the respondent was served with the hearing notice for to day of the application, it has not filed any written submissions either opposing or supporting the application. I would therefore take it that the application is unopposed.



4. It is trite that an appeal ought to be entered within fourteen days of the date of the judgment or sentence appealed against and in the event of failure, the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied as to the reasons for the delay. I also note, that the applicant has advanced reasons for the failure as already set out elsewhere in this ruling. I also appreciate his assertion that his intended appeal has high chances of succeeding and towards this end has annexed draft Memorandum of Appeal with several grounds.
5. As already stated, Rule 4 of the Court of Appeal Rules 2022 provides that this Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.
6. In the case of *Wanyoike Kariuki vs Republic COACRAPPL E060 of 2024*, Relying on the dicta in *Andrew Kiplagat Chemaringo V. Paul Kipkorir Kibet [2018] eKLR* opined that:

“...the law does not set out any minimum or maximum period of delay. All it states is that the 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.”
7. See also the court’s Ruling in *Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997*, where the court opined that:

“...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.”
8. The applicant duly admits that it has taken long for him to lodge the intended appeal however due to the aforementioned reasons the applicant was not in a position to appeal on time.
9. In a nutshell, I am satisfied that, that the applicant has demonstrated reasons for the delay in filing the appeal on time. Further, I find that no prejudice will be suffered by the respondent in the event that the application is granted. I am also aware that the applicant is serving a lengthy sentence and it is only fair and in the interest of justice that he be allowed to exhaust the appellate process.
10. I accordingly allow the application and direct that the applicant files his intended appeal within the next forty-five (45) days from the date of this ruling.

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

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

DEPUTY REGISTRAR

