



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wafula v Republic (Criminal Application E019 of 2025)  
[2025] KECA 1744 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1744 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E019 OF 2025  
MSA MAKHANDIA, JA  
OCTOBER 21, 2025**

**BETWEEN**

**JOB NALIANYA WAFULA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Bungoma, (Kemei, J.,) in HCCRA No. E038 of 2022)*

**RULING**

1. The Applicant was convicted and sentenced to life imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* and sentenced to life imprisonment. His Appeal to the High Court of Kenya at Bungoma was dismissed in its entirety.
2. The applicant wishes to further appeal to this court. However, he is unable to do so because the timelines of this Court which have long gone by. The applicant has now lodged the present application seeking leave to appeal out of time as a pauper.
3. The main ground advanced by the applicant as a reason for his delay in filing the appeal is that he was not supplied with proceedings and judgment of the 1<sup>st</sup> appellate court that would have enabled him to lodge the appeal within time. That therefore the delay was not deliberate and or of his making. He argues further that his intended appeal has overwhelming chances of succeeding and that he should be permitted to exhaust the appellate process.
4. The respondent did not put in any papers in opposition to the application. However, in its submissions, it opposes the application on the grounds that the applicant has not stated whether he filed a notice of appeal in the High Court so that the record of appeal may be supplied to him. It also opines that the delay in filing the memorandum of appeal is inordinate and the reasons adduced in the supporting affidavit are not satisfactory.



5. I hasten to point out that submissions cannot take the place of pleadings. The respondent ought to have filed a replying affidavit raising all these concerns to enable the applicant to respond as appropriate. Given that there is no evidence that the applicant was even served with the submissions, I will ignore them as considering them in the light of what I have said will greatly prejudice the applicant.
6. 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.
7. I have carefully considered the application, the grounds in support thereof and the supporting affidavit and this is my take! 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.
8. In the case of *Wanyoike Kariuki vs Republic COACRAPPL E060 OF 2024*, this Court 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.”
9. See also the court’s Ruling in *Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997*, where the court observed 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 preuudice to the respondent if the application is granted.”
10. 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 been in a position to appeal on time.
11. In a nutshell, I am satisfied that, that the applicant has precisely demonstrated his reasons for the delay of his filing of this 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.
12. 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**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

