



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wahito v Republic (Criminal Application E047 of 2025)  
[2025] KECA 1706 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1706 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E047 OF 2025  
S OLE KANTAI, JA  
OCTOBER 24, 2025**

**BETWEEN**

**WILSON NDUNGU WAHITO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file an Appeal from the Judgment of the High Court at Murang'a (S. C. Chirchir, J.) dated 28th July, 2023 in H.C. CRA No. E021 of 2021.)*

**RULING**

1. The applicant, Wilson Ndungu Wahito has approached the Court for extension of time to appeal out of time against the decision of Chirchir, J. delivered on 28<sup>th</sup> July, 2023 at Murang'a. He says in a supporting affidavit that he was charged with the offence of defilement and sentenced to imprisonment for life; he appealed to the High Court in H.C. Criminal Appeal No. E021 of 2021; the appeal was dismissed on conviction but that sentence was reduced to 45 years imprisonment; he thereafter filed an application for review of sentence in High Court Criminal Review No. E246 of 2024 which seems not to have succeeded – he was told to appeal to this Court. He says that the proposed appeal has high chances of success and that is why he is asking for leave to enable him appeal. He has attached a copy of the judgment of Chirchir, J. where appeal on conviction was dismissed but sentence reduced.
2. I have seen written submissions by the respondent where it is stated that the Office of Director of Public Prosecutions does not oppose the application.



3. The principles relevant to an application for leave to extend time under rule 4 of the Court of Appeal Rules were discussed in *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* Civil Application No. NAI 255 of 1997 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are 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.”

4. The applicant has traveled a long route since being convicted by the trial Court. He filed an appeal which was allowed on sentence; he then filed an application on a re-consideration of sentence but Githua, J. informed him on 14<sup>th</sup> March, 2025 that he needed to approach this Court, not the High Court. I note that the Motion is undated but the affidavit in support is dated 25<sup>th</sup> June, 2025 which I will take as the date of the application. The period that elapsed from the orders of the High Court to the filing of the application is slightly over 3 months. I note that the applicant is unrepresented; he is a convict at Nyeri Prison who may not have efficient facilities to abide by strict timeliness. I think in the circumstances that the delay is not inordinate at all. I have no material on which to decide whether the appeal has chances of success but, again, that is just but a secondary consideration in an application like this one.
5. I have noted that the respondent is not opposed to the application.
6. I allow the Motion. Let notice of appeal be lodged within fourteen (14) days of today and record of appeal be lodged within twenty one (21) days thereafter.

**DATED AND DELIVERED AT NYERI THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

