

**IN THE COURT OF
APPEAL AT
NAKURU**

**(CORAM: GACHOKA, J.A - IN CHAMBERS)
CRIMINAL APPLICATION NO. E077 OF
2025**

BETWEEN

**SAMUEL KIPLANGAT KUTOL.....APPLICANT
AND REPUBLIC**

RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence by the High Court of Kenya at Kabernet (E.M. Muriithi, J.) delivered on 27th August 2020

in

HCCRA No. 36 of 2018)

RULING

1. In his Notice of Motion dated 2nd September 2025, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence upheld by the High Court at Kabernet (E. M. Muriithi J.) in **HCCRA No. 36 of 2018**. The applicant was charged with the offence of incest by a male contrary to section 20 (1) of the Sexual Offences Act in the Eldama Ravine Principal Magistrate's Court *Criminal Case (SO)*

No. 9 of 2018 . He was convicted on 27th June 2018 and sentenced to life imprisonment.

Dissatisfied, the appellant pursued an appeal before the Kabarnet High Court. *Murrithi, J.* dismissed his appeal on 27th August 2020 imploring the present application.

2. It is supported by the grounds on the face of it, the supporting affidavit of the applicant and the memorandum of appeal, all dated 2nd September 2025. The applicant seeks leave to appeal out of time for the reason that he has not been furnished to date with the impugned judgment and the proceedings. He invoked the provisions of Article 50 (2) (q) of the Constitution praying that this Court does allow his application. He urged that the respondent stood to suffer no prejudice if the orders sought are granted.
3. The respondent supported the application through the written submissions of Senior Assistant Director of Public Prosecutions Mr. Omutelema dated 10th November 2025. The reason the application was supported was because the sentence meted out to the applicant is lengthy.
4. In an application of this nature, a Court is invited to exercise its discretion under rule 4 of this Court's rules. Such

discretion is

exercised based on a well-trodden path and set out principles established by the Supreme Court. I need not rehash those principles. [See **Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others** [2014] eKLR.

5. I have considered the reasons advanced by the applicant as set out in the Motion, the supporting affidavit and the respondent's submissions. I have also considered the draft memorandum of appeal annexed to the application. The applicant filed his application 5 years after the impugned judgment was delivered. He explained that he has not been furnished with the proceedings and judgment. He states that his attempts to be supplied with the judgement and the proceedings was not successful. This explanation has not been controverted by the respondent. While in my view the delay is inordinate, I find that the applicant ought to benefit from the exercise of this Court's discretion as the reason for the delay is explained. Therefore, I direct the applicant to file his notice of appeal within 14 days

from the date of this order. Thereafter, the record of appeal shall be filed and served within 30 days.

Dated and delivered at Nakuru this 17th day of November 2025.

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

*I certify that this is a
True copy of the original
Signed*

DEPUTY REGISTRAR

