



REPUBLIC OF KENYA



KENYA LAW
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**Kipchirchir v Republic (Criminal Application E074 of 2025)
[2025] KECA 1915 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1915 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E074 OF 2025
PM GACHOKA, JA
NOVEMBER 17, 2025
CORAM: GACHOKA, J.A – IN CHAMBERS)
CRIMINAL APPLICATION NO. E074 OF
2025**

BETWEEN

DANIEL KIPCHIRCHIR 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 Kabarnet (Korir, J.) delivered on 30th June 2022 in HCCRA No. 59 of 2018)

RULING

1. In his Notice of Motion dated 21st August 2025, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence upheld by the High Court sitting at Kabarnet(Korir J). The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *akn ke act 2006 3 Sexual Offences Act* in Kabarnet CMC Criminal Case No. 15 of 2018. After full trial, the applicant was convicted of the offence and sentenced to life imprisonment. He appealed before the Kabarnet High Court. His first appeal was dismissed by Korir, J. (as he then was) on 30th June 2022.
2. The applicant is dissatisfied with those findings. He however failed to lodge his appeal in good time hence the present application. It is supported by his undated supporting affidavit. The main grounds raised by the applicant are twofold: firstly, he was not furnished with the proceedings and judgment in good time. Secondly, he relied on his family to retain the services of an advocate but all was in vain. He urged this Court to grant the relief sought.



- 3. The state filed its written submissions dated 10th November 2025. Senior Assistant Director of Public Prosecutions Mr. Omutelema did not oppose the application. He submitted that though the explanation for the delay was not satisfactory, coupled with the inordinate delay in filing the application, the sentence meted out was lengthy.
- 4. The discretion set out in rule 4 of the Court of Appeal Rules 2022 is wide and unfettered. This Court in Wasike vs. Swala [1984]

KLR 591 stated:

“ As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- a. That there is merit in his appeal.
- b. That the extension of time to institute and or file the appeal will not cause undue prejudice to the respondent; and
- c. That the delay has not been inordinate.”

- 5. I have considered the reason advanced by the applicant, the respondent’s submissions and the law. The applicant has explained the delay in filing the appeal on two cogent grounds. Those reasons are satisfactory and have explained the delay. I have considered the explanation that he was expecting his family to retain a lawyer to pursue his appeal and I have also considered the fact that the applicant is serving sentence in prison, and he has demonstrated that he is eager to pursue the appeal. Therefore, I find that the applicant has met the threshold for the exercise of my discretion in his favour. Accordingly, I direct the applicant to file his notice of appeal within 14 days from today’s date. Thereafter, the record of appeal shall be filed within 30 days.

DATED AND DELIVERED AT NAKURU THIS 17TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

Deputy Registrar

