

**IN THE COURT OF
APPEAL AT
NAKURU**

**(CORAM: GACHOKA, J.A - IN
CHAMBERS) CRIMINAL APPLICATION NO.
E080 OF 2025**

BETWEEN

**IBRAHIM SAMUEL KIMANI.....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 Nakuru (R.P.V. Wendoh, J.) delivered on 16th October 2013

in

HCCRA No. 295 of 2011)

RULING

- 1.** The applicant's Notice of Motion dated 8th September 2025 seeks the leave of this Court to appeal out of time against the conviction and sentence upheld by the Nakuru High Court in **HCCRA No. 295 of 2011(R.P.V Wendoh)** The applicant was charged in **Nakuru CMC Criminal Case (SO) No. 274 of 2010)** with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act. After full trial,

the applicant was convicted of the offence and sentenced to life imprisonment. The applicant appealed against that decision before the Nakuru High

Court. His first appeal against that conviction and sentence was dismissed by *Wendoh, J.* on 16th October 2013 in *HCCRA No. 295 of 2011*.

2. The applicant now seeks to appeal before the Court of Appeal. He filed his application grounded by the reasons on the face of it and his supporting affidavit sworn on 8th September 2025. The applicant seeks leave to appeal out of time for the reason that he pursued a re-sentence hearing in Nakuru ***HCCRMISCAPPL/E226/2024*** but was unsuccessful. Furthermore, he did not receive the judgment in good time to enable him file his appeal on time.
3. The application was not opposed. In its written submissions dated 10th November 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema, submitted that while there was a delay of about 12 years in filing the application, the same ought to be allowed since the delay has been explained and the sentence meted out is lengthy.
4. Rule 4 of this Court's rules provides that the Court may extend the time limited by these Rules for the doing of any

act authorized

or required by the 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. This Court in the case of **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi** Civil Application No. Nai. 255 of 1997 (unreported) expressed itself 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 settled 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.”

5. I have considered the application, the supporting affidavit, the respondent's submissions and the law. The applicant explained that he opted to pursue a re-sentencing of his sentence in HCCRMISCAPPL/E226/2024 hence the delay. Though it is not clear when the decision was delivered, I find that the applicant filed the present application within a span of a year since the resentencing was determined. I am alive to the conflicting jurisprudence after the Supreme Court delivered its judgement in the famous case of **Muruatetu**

& another vs. Republic;

Katiba Institute & 5 others (Amicus Curiae)

[2017] KESC 2 (KLR). The Supreme Court later issued directions in the now known Muruatetu 2 (**Muruatetu & another vs. Republic; Katiba Institute & 4 others (Amicus Curiae)** [2021] KESC 31 (KLR)) clarifying that resentencing was only applicable to cases of murder. Since it is not in dispute that the decisions created confusion to litigants as to their available avenues when dissatisfied with the findings of a trial court, it is only fair that this should not be used against the applicant. In the circumstances, I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Consequently, applicant shall 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 18th 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