



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kamau v Republic (Criminal Application E063 of 2025)  
[2025] KECA 1900 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1900 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E063 OF 2025  
JM MATIVO, JA  
NOVEMBER 12, 2025  
CRIMINAL APPLICATION NO. NAK E063 OF  
2025**

**BETWEEN**

**FRANCIS NDONGA KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to appeal out of time against the judgment of the High Court of Kenya at Naivasha (R. Mwongo, J.) dated 2nd November, 2020 in CRA No. 18 of 2018)*

**RULING**

1. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with 8 (2) of the *akn ke act 2006 3 sexual offences Act*. He was convicted and sentenced to life imprisonment. His appeal to the High Court being Naivasha CRA No. 18 of 2018 was dismissed on 2<sup>nd</sup> November 2020 and the matter was referred back to the Magistrates' Court for resentencing. The applicant states that the resentencing took place on 9<sup>th</sup> August 2021 in his absence. Although aggrieved by the High Court decision, he failed to lodge his notice of appeal within the statutory-stipulated period of 14 days. In his supporting affidavit dated 10<sup>th</sup> June 2024, he contends that due to his earlier intention to appeal, he now seeks leave to appeal out of time against the judgment of the High Court.
2. Vide written submissions dated 3<sup>rd</sup> November 2025, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the application pointing to the lengthy sentence of life imprisonment.
3. Rule 4 of the Court of Appeal Rules gives the Court unfettered discretion to 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 the Rules, whether before or after the doing of the act on such terms as it thinks just. The Supreme Court in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR, stated that:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for 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.”

4. Although the application is not opposed, the applicant must still satisfy the principles that have been laid down in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [supra]. The applicant’s explanation is unsatisfactory. Pursuing resentencing as ordered by the first Appellate Court is not a satisfactory reason for a delay of four years. However, the order sought is discretionary. I must underscore the principle that discretion must be exercised judicially and not capriciously. Each case must be decided on its own peculiar facts, bearing in mind the need to do what is just and fair in the circumstances. The applicant is serving a life sentence and an appeal to this Court could be his last chance to ventilate his grievances. Accordingly, I am persuaded that it is only fair and just in the circumstances that I allow him to exercise his right of appeal. Accordingly, the application dated 22<sup>nd</sup> November 2024 is hereby allowed. The applicant shall file his appeal within 45 days from the date of this ruling.

**Dated and delivered at Nakuru this 12<sup>th</sup> day of November 2025**

**J. MATIVO**

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR.

