



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kang'ethe v Republic (Criminal Application E069 of 2025)  
[2025] KECA 1909 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1909 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E069 OF 2025  
PM GACHOKA, JA  
NOVEMBER 12, 2025**

**BETWEEN**

**PETER NJANG'IRO KANG'ETHE ..... 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 (Nyagah, J.) delivered on 25th July 2024 in HCCRA No. 106 of 2018)*

**RULING**

1. In his Notice of Motion dated 17<sup>th</sup> July 2025, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence upheld by the High Court at Nakuru in HCCRA No. 106 of 2018. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* in Nakuru SRMC Criminal Case (SO) no. 142 of 2015. He was convicted and sentenced to life imprisonment at the trial court. The applicant appealed before the first appellants court in Nakuru HCCRA No. 106 of 2018. His appeal against that conviction and sentence was dismissed by Nyagah, J. on 25<sup>th</sup> July 2024.
2. The application was supported by the grounds on its face and the supporting affidavit of the applicant sworn on 17<sup>th</sup> July 2025. According to the applicant, he could not file his appeal on time because his appeal was wrongly filed in the Nakuru High Court referenced HCCRMISCAPP/E129/2024. On discovery of this inadvertent error, the applicant was advised to file the present application as he was out of time. In further support of his application, the applicant annexed the case tracking number, his memorandum of appeal dated 29<sup>th</sup> July 2024 and notice of appeal dated 29<sup>th</sup> July 2024.
3. The application was disposed of by way of written submissions.



The applicant filed his dated 4<sup>th</sup> October 2024. He urged this Court to allow the application for the reasons set out in his Notice of Motion. He urged this Court to invoke the provisions Articles 48, 50 (2) (q) and 159 (2) (d) of *the Constitution*, Rule 4 of the Court of Appeal Rules 2022, section 349 of the Criminal Procedure Code as well as the decisions in Nicholas Kiptoo Arap Korir Salat vs. IEBC and 7 others [2014] eKLR and Fahim Yasin Twaha vs. Timamy Issa Abdalla & 2 others [2015] eKLR in allowing his application.

4. In the written submissions dated 31<sup>st</sup> October 2024, Senior Assistant Director of Public Prosecutions Mr. Omutelema acting for the respondent did not oppose the application. His observation was the period of delay was two months and therefore inordinate. He was persuaded that the reasons for delay were justifiable. Further, the sentence meted out to the applicant was lengthy.
5. Rule 4 of the Court of Appeal Rules 2022 gives this Court discretionary powers to extend time limited for the doing of an action under the rules. This Court in Karny Zahrya & another vs. Shalom Levi [2018] eKLR stated the following as issues to be considered in an application under rule 4 of this Court's Rules:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal.”

6. I have considered the reasons advanced by the applicant as set out in the Motion, the supporting affidavit, annexures thereto and the respondent's concession to the application. The applicant states that the reason for the delay was that his appeal was wrongly filed in Nakuru High Court HHCRMISCAPPL/E129/2024. The applicant has explained the reason for the delay and I need not question the circumstances that led to the wrong filing as alleged. In view of the foregoing, I am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court. Accordingly, the 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 12<sup>TH</sup> 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**

