

**IN THE COURT OF  
APPEAL AT  
NAKURU**

**(CORAM: GACHOKA, J.A - IN  
CHAMBERS) CRIMINAL APPLICATION NO.  
E060 OF 2025**

**BETWEEN**

**DAVID CHEGE KAMAI.....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 Naivasha (Ngenye-Macharia, J.) delivered on 20<sup>th</sup> December 2022*

*in*

***HCCRA No. 13 of 2020)***

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**RULING**

1. In his Notice of Motion, the applicant seeks the leave of this Court to appeal out of time against the conviction and sentence upheld by the High Court sitting at Naivasha in *HCCRA No. 13 of 2020*. In *Engineer CM Criminal Case (SO) No. 13 of 2019*, the applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (4) of the Sexual Offences Act. The matter went for full trial where the applicant was convicted as

charged and sentenced to 15 years imprisonment. The applicant challenged those findings before the Naivasha High Court. In her

judgment dated 20<sup>th</sup> December 2022, *Ngenye-Macharia, J.* (as she then was) found that the appeal against the conviction and sentence lacked merit and dismissed it in its entirety.

2. The applicant is aggrieved with those findings. His application is supported by the grounds on the face of it and his affidavit sworn on 1<sup>st</sup> June 2025. The reasons urging this Court to allow the application was that he pursued an application for review before the Nyandarua High Court that was ultimately dismissed. Furthermore, he lamented that he was not supplied with the proceedings and judgment in good time to enable him appeal on time.
3. The application was canvassed by way of written submissions. The applicant filed his written submissions dated 20<sup>th</sup> October 2025. He submitted that he did not appeal in time because he was unable to secure the services of a lawyer, was not furnished with the proceedings and judgment in good time and he had opted to pursue an application for review of his sentence before the Nyandarua High Court. he submitted that those were compelling reasons to allow the application and prayed so.

4. The respondent filed written submissions dated 3<sup>rd</sup> November 2025 opposing the application. Senior Assistant Director of Public Prosecutions Mr. Omutelema submitted that the applicant was undeserving of the orders sought because the delay of three years was inordinate, the reasons for the delay were unsatisfactory and that the trial court and first appellate court meted out a lawful sentence.
5. 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. Its principles have been well enunciated by the Supreme Court in ***Agatha vs. Azad & 3 others*** [2022] KESC 1 (KLR).
6. I have considered the application, the supporting affidavit, the submissions and the law. The reason given for the delay in filing the appeal is that the applicant applied for review but the application failed. Though the merit of the appeal is one factor that a judge should consider in the exercise of

discretion to extend time, I will resist the temptation to consider whether the

applicant can pursue an appeal, having failed in his application for review. As to whether the sentence is lawful or not can only be determined by a full bench. Therefore, I will let the applicant have his day in Court. Accordingly, am satisfied to hold that the application has met the threshold for the exercise of discretion by this Court.

7. Accordingly, 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 11<sup>th</sup> 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**