



REPUBLIC OF KENYA



KENYA LAW
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**Kitili v Republic (Criminal Application E040 of 2025)
[2025] KECA 1872 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1872 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E040 OF 2025
JM MATIVO, JA
NOVEMBER 10, 2025**

BETWEEN

PAUL MULUVI KITILI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for extension of time to file a notice of appeal
against the judgment of the High Court of Kenya at Nakuru (J.
Ngugi, J.) dated 11th November 2019 in CRA No. 10 of 2013)*

RULING

1. The applicant, Paul Mulusi Kitili was charged before the Chief Magistrate's Court in Nakuru with the offence of defilement of a child contrary to Section 8 (1) as read with Section 8 (2) of the [Sexual Offences Act](#). After a full trial, he was convicted and sentenced to life imprisonment. His appeal to the High Court against both conviction and sentence being Nakuru High Court Criminal Appeal No. 10 of 2013 was dismissed on 11th November 2019 by Ngugi, J. Although aggrieved, he failed to lodge his notice of appeal within the statutory-stipulated time of 14 days. By an application dated 27th March 2025, the subject of this ruling, the applicant seeks extension of time to appeal against the said judgment. In his supporting affidavit sworn on 27th March 2025, he contends that he has severally filed notices of appeal to the High Court but the same has not been successful. Therefore, he seeks extension of time to file his appeal out of time.
2. As at the time of writing this ruling on 10th November 2025 at 0900HRS, the respondent had not yet complied with the Court's case management directions issued on 29th October 2025 and the hearing notice sent on 28th October 2025 at 13.27HRS reminding parties to file their written submissions



within 24 hours. Therefore, this application is unopposed. Rule 58 (2) of the Court of Appeal Rules stipulates:

“(2) If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing..”

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 these Rules, whether before or after the doing of the act on such terms as it thinks just (see *Fakir Mohammed vs. Joseph Mugambi and two others* [2005] eKLR).

4. There is no maximum or minimum period of delay set out under the law. However, a prolonged and inordinate delay is more likely than not to disentitle the applicant leave. Likewise, the reason or reasons for the delay must be plausible. In *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR this Court stated:

“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.”

5. Having considered the application, the supporting affidavit, and the annexed notice of appeal. I note that indeed the applicant filed a notice of appeal in 2022 which was more than a year late. The applicant has also failed to explain the efforts he undertook to file his appeal bearing in mind that there has been a delay of almost four years in bringing the instant application. Consequently, the delay in bringing the instant application is inordinate and has not been satisfactorily explained. I am inclined not to exercise my discretion in his favour. Accordingly, I dismiss the notice of motion dated 27th March 2025.

Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF NOVEMBER 2025

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

