



REPUBLIC OF KENYA



KENYA LAW
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**Maneri v Republic (Criminal Application E049 of 2025)
[2025] KECA 1853 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1853 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E049 OF 2025
PM GACHOKA, JA
NOVEMBER 10, 2025**

BETWEEN

DANIEL MAINA MANERI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence of the High Court of Kenya at Nakuru (Prof. Ngugi, J.) delivered on 18th December 2019 in HCCRA No. 185 of 2013)

RULING

1. The applicant's Notice of Motion dated 19th May 2025 seeks the leave of this Court to appeal out of time from his conviction and sentence upheld by the Nakuru High Court in HCCRA No. 185 of 2013. 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* at the trial court. After full trial, the appellant was convicted as charged and sentenced to life imprisonment. On a first appeal, Prof. Ngugi, J., as he then was, dismissed it both on conviction and sentence.
2. The applicant is dissatisfied with those findings. His application is supported by the grounds on its face and his supporting affidavit. He urged this Court to allow his application for the reason that he was not supplied with the proceedings in time. He also prays that he be exempted from paying court fees because he is a pauper. The plea on fees is not necessary as rule 109 (a) of the Rules of this Court exempts payment of fees in criminal applications or appeals.
3. The applicant filed written submissions dated 29th October 2025.
He persuaded this Court to invoke rule 4 of this Court's rules and Article 159 of *the Constitution* to grant the relief sought. The respondent filed written submissions through Senior Assistant Director



of Public Prosecutions Mr. Omutelema dated 3rd November 2025. He urged this Court to allow the application for the sentence meted out was lengthy.

4. The discretion set out in rule 4 of the Court of Appeal Rules 2022 is wide inexhaustive. However, in exercise of the same, a judge should not be guided by whims, caprice or sympathy. In *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013] eKLR the Court held as follows regarding the powers donated under rule 4 of this Court's rules, the provision the application is hinged upon:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

5. I have considered the reason advanced by the applicant, the period of delay, the parties' submissions and the law. It cannot be denied that the applicant has taken a whopping six years to lodge this application. The respondent in its submissions states that the delay is unreasonable but that considering the length of the imprisonment, that is the life sentence, it is not opposed to the extension. I agree with the respondent that there is an inordinate delay in filing this application. That notwithstanding, I agree also with the respondent that the interest of justice militates towards granting rather than denying him an opportunity to ventilate his appeal.
6. 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 10TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

