



REPUBLIC OF KENYA



KENYA LAW
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**Ngugi v Republic (Criminal Application E058 of 2025)
[2025] KECA 1881 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1881 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E058 OF 2025
PM GACHOKA, JA
NOVEMBER 11, 2025**

BETWEEN

JAMES KURIA NGUGI 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 delivered by G. Nzioka, J. in HCCRA No. E007 of 2023)

RULING

1. In his Notice of Motion dated 10th June 2025, 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. E007 of 2023. In Engineer CM Criminal Case No. E088 of 2022, the applicant was charged with the offence of defilement contrary to section 8 (1) as read together with section 8 (4) of the [Sexual Offences Act](#). The matter went for full trial where the applicant was convicted and sentenced to 20 years imprisonment. His conviction was affirmed and sentence upheld by the first appellate court (Nzioka J).
2. It is those findings that have galvanized the applicant to file the present application. It is supported by his affidavit dated 10th June 2025. He has urged this Court to consider that he was not furnished with the judgment and proceedings timeously to enable him file his appeal on time. Additionally, though his relatives promised to retain the services of an advocate, that did not materialize. It is important to point out that the applicant did not annex a copy of the impugned ruling to enable this Court to establish when it was delivered. In addition the date that the judgement was delivered is not disclosed in the grounds in support or in the submissions by the parties.
3. The application was canvassed by way of written submissions.
The applicant filed his written submissions dated 27th October 2025. He urged this Court to invoke Articles 50 (2) (q) and 159



- (2) (d) of *the Constitution* and rule 4 of this Court’s rules to allow the application as prayed. Senior Assistant Director of Public Prosecutions Mr. Omutelema filed written submissions dated 3rd November 2025 on behalf of the respondent. He did not oppose the application for the reason that the sentenced meted out to the applicant is lengthy.
4. 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. In *Mwangi vs. Kenya Airways Ltd (2003) KLR 486*, the Court held:
- “Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi (Civil Application No. Nai 255 of 1997) (unreported)*, the Court expressed itself thus:
- “It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
5. I have considered the application, the supporting affidavit, the period of delay, the submissions of the parties and the law. As stated earlier, the applicant failed to annex a copy of the impugned decision. This places the Court in an awkward position for the application is not complete. I cannot ascertain with precision when time started running for the applicant to lodge his notice of appeal as the applicant has not disclosed the date when the judgement was delivered. As stated by a wealth of authorities, the period of delay is one condition that ought to be taken into account in the exercise of discretion to extend time. That exercise of discretion is not a mechanical exercise or an act of mercy, so to speak. An applicant ought to approach the court with all the necessary information that explains the delay in lodging an appeal on time. On the face of the application, the application has been filed after two years but it has gaps that are not explained.
6. In the circumstances, I am unable to exercise my discretion. The Notice of Motion dated 10th June 2025 is hereby struck out and the applicant is granted leave to file a fresh application with full details on the date of judgment of the High Court.

DATED AND DELIVERED AT NAKURU THIS 11TH 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

