



**Ngugi v Republic (Criminal Application E050 of 2025)
[2025] KECA 1852 (KLR) (10 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1852 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E050 OF 2025
PM GACHOKA, JA
NOVEMBER 10, 2025**

BETWEEN

DENNIS KIMANI NGUGI 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 Nyandarua (Kiarie, J.) delivered on 29th March 2025 in HCCRA No. E120 of 2023)

RULING

1. By Notice of Motion dated 14th May 2025, the applicant begs leave of this Court to appeal out of time against the judgment of the Nyandarua High Court in HCCRA No.120 of 2023. The applicant was charged in Engineer CM Criminal Case (SO) no. E002 of 2020 with the offence of defilement contrary to 8 (1) as read with section 8 (4) of the Sexual Offences Act. After full trial, the applicant was convicted of the offence and sentenced to 15 years imprisonment. His appeal before the Nyandarua High Court (K. Kiarie J) was dismissed on 29th March 2025.
2. The applicant is aggrieved with those findings. His application is supported by the grounds in the body of the application and his supporting affidavit sworn on even date. He urged this Court to allow the application for the reason that the court did not consider his mitigation before he was sentenced.
3. The application was canvassed by way of written submissions. The applicant filed his written submissions dated 28th October 2025. He submitted that the application was merited by dint of Articles 50 (2) (q) & 159 (2) (d) of the Constitution and rule 4 of the Court of Appeal rules. He prayed that it be allowed.



4. The respondent filed written submissions dated 3rd November 2025 through Senior Assistant Director of Public Prosecutions Mr. Omutelema. He argued that the delay of 2 months was not inordinate regardless of the fact that the reasons for the delay were not advanced. He did not therefore oppose the application.
5. This Court in *Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge* [2013] eKLR 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.
6. I have considered the reason advanced by the applicant, the submissions and the law. Though the applicant, who is in person and currently in prison, has not explained the circumstances that led to the delay in lodging the appeal out of time, I note that the impugned judgment was delivered on 29th March 2025. He filed the present application less than two months thereafter. For those reasons, I am satisfied that the applicant ought to benefit from the exercise of this Court’s discretion. In the circumstances, I direct the applicant to file his notice of appeal within 14 days from the date of this order. Thereafter, the applicant shall file his record of appeal within 45 days.

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

M. GACHOKA C.Arb, FCI Arb.

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JUDGE OF APPEAL

