



REPUBLIC OF KENYA



KENYA LAW
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**Njeri v Republic (Criminal Application E061 of 2025)
[2025] KECA 1888 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1888 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E061 OF 2025
PM GACHOKA, JA
NOVEMBER 11, 2025**

BETWEEN

FRANCIS MWANGI NJERI 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 Nanyuki (A. Ndung'u, J.) delivered on 16th October 2024 in HCCRA No. E008 of 2024)

RULING

1. The applicant has invoked the provisions of rule 4 of the Court of Appeal Rules 2022 in his undated Notice of Motion. He seeks leave to appeal out of time against his conviction and sentence upheld by the Nanyuki High Court in HCCRA No. E008 of 2024. The applicant was in Rumuruti Chief Magistrate's Court Criminal Case (SO) No. E003 of 2022 charged with the offence of defilement contrary to section 8 (1) as read together with section 8 (3) of the *akn ke act 2006 3 Sexual Offences Act*.
2. After a full trial, the applicant was convicted and sentenced to 20 years imprisonment. Dissatisfied, the applicant appealed before the Nanyuki High Court in HCCRA No. E008 of 2024. In his judgment dated 16th October 2024, Ndung'u, J. dismissed the appeal on conviction and sentence.
3. The application now wishes to file a second appeal before this Court. His application is supported by the grounds on its face and the supporting affidavit of the applicant sworn on 4th June 2025. He seeks leave to appeal out of time for the reason that he was not furnished with the judgment in good time to enable him pursue an appeal.
4. The respondent filed written submissions through Senior Assistant Director of Public Prosecutions Mr. Omutelema. He filed written submissions dated 3rd November 2025 stating that he was not



opposed to the application. He stated that though the one-year delay was inordinate, and which period of delay was not accounted for satisfactorily, the sentence meted out to the applicant was lengthy. He was therefore deserving of the orders sought.

5. Under rule 4 of this Court’s Rules 2022, discretion is given to extend time for the doing of any act provided for under the Rules. In *Henry Mukora Mwangi vs. Charles Gichina Mwangi Civil Application No. Nai. 26 of 2004*, this Court held:

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd. [2003] KLR 486* in which this Court stated:

“Over the years, the Court has, of course 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: firstly, 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.”

6. I have considered the reason advanced by the applicant as set out in the application, the supporting affidavit, the period of delay, the respondent’s submissions and the law applicable. The applicant states that he applied but was not given a copy of the judgment on time. This is not disputed by the respondent. I am satisfied that the applicant has met the threshold for the exercise of discretion by this Court. 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 11TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCI Arb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

Deputy Registrar

