



REPUBLIC OF KENYA



KENYA LAW
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**Ayatta v Republic (Criminal Application E084 of 2025)
[2025] KECA 1936 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1936 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E084 OF 2025
PM GACHOKA, JA
NOVEMBER 19, 2025**

BETWEEN

ANTHONY MUGA AYATTA 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 Nakuru (J. Mulwa, J.) delivered on 15th July 2015 in HCCRA No. 79 of 2014)

RULING

1. By Notice of Motion dated 16th September 2025, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence upheld by the Nakuru High Court in HCCRA No. 79 of 2014(Mulwa J). 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*. After a full trial, the trial court convicted him of the offence and sentenced him to life imprisonment. Dissatisfied, the appellant lodged an appeal before the Nakuru High Court in HCCRA No. 79 of 2014. Mulwa, J. dismissed his appeal on conviction and sentence on 15th July 2015.
2. The applicant is aggrieved with those findings. He filed the present application supported by his affidavit sworn on 16th September 2025. He beseeched this Court to grant him leave to appeal out of time for the following reasons: he appealed in good time but there was no forthcoming response; he was not furnished with the judgment in good time to enable him appeal on time; and he intended to rely on his grounds of appeal that would be amended eventually.
3. The application was heard on the basis of the parties' written submissions. The applicant filed written submissions dated 4th November 2025. He urged this Court to consider the reasons advanced in his application since he had good grounds of appeal. He further urged this Court to invoke rule 4 of the



Court of Appeal Rules 2022 and Articles 22, 50 (2) (q) and 159 (2) (d) of the Constitution to allow his application.

4. The state filed its written submissions dated 10th November 2025.

Senior Assistant Director of Public Prosecutions Mr. Omutelema urged this Court to allow the application since the sentence meted out is lengthy. He however acknowledged that the delay of 10 years was inordinate and the explanation for the delay in filing the application was unsatisfactory.

5. In Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR, this 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.

6. I have considered the reason advanced by the applicant, the respondent's submissions and the law. The applicant has filed this application a whopping 10 years after the judgment he intends to appeal from was rendered. In a bid to explain the delay, he stated that he appealed in good time but there was no forthcoming response. Additionally, he was not furnished with the judgment in good time to enable him appeal on time.

7. The above reasons in my view are firstly contradictory. Did he file his appeal in good time or did he not file his appeal at all? Secondly, if he filed his appeal in good time, where is the evidence of that appeal? What steps were taken by the appellant for an explanation that it was not forthcoming? If he didn't file his appeal in good time on account of not being furnished with the judgment, what are the circumstances that have developed or changed as to persuade him to file the present application now?

8. All the above questions cast doubt on the genuineness and credibility of the applicant's intentions. I do not think that the applicant was interested in pursuing his appeal. The delay is extremely inordinate and inexcusable. He has not persuaded this Court that he deserves the exercise of discretion under rule 4 of this Court's Rules. I therefore do not hesitate to find that the present application lacks merit. It is hereby dismissed.

DATED AND DELIVERED AT NAKURU THIS 19TH 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

