



**Mwai v Republic (Criminal Application E116 of 2024)
[2025] KECA 2195 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2195 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E116 OF 2024
A ALI-ARONI, JA
DECEMBER 11, 2025**

BETWEEN

DANIEL KINYUA MWAI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time from the Judgment of the High Court at Nanyuki (H. Waweru, J) dated 9th March 2022 in HCCRA No. 56 of 2017)

RULING

1. Before the Court is an application by way of a notice of motion ostensibly brought under rules 42 and 43, though the same ought to be brought under rule 4 of the Court of Appeal Rules (the Rules), seeking leave to appeal out of time.
2. The application is predicated on the grounds on the face of the application and rehashed in the supporting affidavit of the applicant, Daniel Kinyua Mwai, sworn on 19th July 2024, where he deposed that he was tried, convicted and sentenced to 25 years imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*; he appealed to the High Court and the sentence of 25 years imprisonment was substituted with a term of 20 years; he wishes to appeal against the decision of the first appellate court and seeks to appeal out of time; the delay was occasioned by delay in the supply of a copy of the judgement; he did not receive a copy when the same was delivered.
3. The respondent has not filed a response to the application nor submissions.
4. I have considered the application and the affidavit in support. The issue for determination is whether the prayer seeking leave to appeal out of time be granted.



5. Rule 4 of the Rules allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorised or required by the Rules. In *Boniface Emuria Loro vs. Republic* [2003] KECA 91 (KLR), this Court was faced with an application for leave to file an appeal out of time, and the main reason for the delay in filing the appeal within the prescribed period was that the applicant was not supplied with a copy of the judgment in time. The application was allowed.

In *Ngige vs. Republic* (Criminal Application E013 of 2024) [2024] KECA 848 (KLR), the Court held; -

“The application is unopposed. Rule 4 of the Court of Appeal Rules governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorized or required by the Rules. I have considered the application and find the delay explained as having been caused by slow administrative action to supply the proceedings of the superior court in time for the filing of the appeal before expiry of time limited to do so. In the premises, I find merit in this application.”

6. Although a considerable time has lapsed since the judgment of the High Court was delivered, and the appellant does not say when the said judgment became available to him, I take note that the application remains unopposed. Secondly, the bureaucracy between the courts and the prison is such that it takes time for documents to be transmitted between the institutions, leaving prisoners at the mercy of a slow and inefficient system.
7. The applicant is to file the intended appeal within the next fourteen (14) days of this ruling.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER, 2025.

ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

