



**Nduta v Republic (Criminal Application E120 of 2024)
[2025] KECA 2160 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2160 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E120 OF 2024
A ALI-ARONI, JA
DECEMBER 11, 2025**

BETWEEN

AUGUSTINE MARERI NDUTA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the Judgment of the High Court of Kenya at Murang'a (S. C. Chirchir, J.) delivered on 21st March 2023 in HCCRA No. 86 of 2016)

RULING

1. Before the Court is an application by way of an undated notice of motion ostensibly brought under rules 31 and 42 as opposed to 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 which are rehashed in the undated supporting affidavit of the applicant, Augustine Mareri Nduta who avers that he was charged with the offence of defilement contrary to section 8(1) as read with 8(3) of the *Sexual Offences Act* and sentenced to 20 years imprisonment; he appealed to High Court vide Criminal Appeal No. 86 of 2016 at Murang'a, where his appeal was later dismissed on 21st March 2023; he was not furnished with a copy of the judgment by the court on the judgment day to enable him prepare his appeal in time, hence the delay; he implores the Court to allow him to appeal out of time.
3. The applicant has filed an undated submission in person and explains the delay in filing the appeal by stating that he was being held at the Nyeri Main Prison during the delivery of the judgment via video link on 21st March 2023, he was not furnished with a copy of the judgment in time to prepare and file an appeal within the prescribed period; he was unrepresented; he has now received a copy of the judgment; and his appeal has a high chance of success.



4. The applicant argues further that the High Court failed in its duty to analyze and re-evaluate the evidence presented to it. Furthermore, he asserts that both courts below failed to consider that the elements of the offence were not proved. In support, he relies on the case of *Okeno vs. Republic* (1972) E.A. 32.
5. I have considered the application and the affidavit in support. The issue for determination is whether to grant leave to the applicant to file his appeal out of time.
6. Rule 4 of the Rules governs the extension of time. It allows the Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.
In *Boniface Emuria Loro vs Republic* [2003] KECA 91 (KLR), the Court faced with a similar application, and reason allowed the application.
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.”
7. The application remains unopposed. Secondly, the applicant was caught up in the usual bureaucratic procedures between the courts and the prison, where documents are not transmitted promptly between the institutions, leaving prisoners at the mercy of a slow and inefficient system.
8. It is therefore fair and just to grant the applicant time to file the intended appeal. The same be filed 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

