

**IN THE COURT OF  
APPEAL AT NYERI**

**(CORAM: ALI-ARONI, J.A. (IN CHAMBERS))**

**CRIMINAL APPLICATION NO. E059 OF**

**2025 BETWEEN**

**PETER KINYUA WAMBUGU.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an application for extension of time to file a notice of appeal out of time against the Judgment of the High Court of Kenya at Kerugoya (L. Njuguna, J.) delivered on 29<sup>th</sup> September 2023*

*in*

***HCCRA No. E016 of 2022)***

**\*\*\*\*\***

**RULING**

1. Before the Court is an application, by way of a notice of motion dated 10<sup>th</sup> April 2025, ostensibly brought under **Rule 113** of the Court of Appeal Rules 2010. The application seeks an extension of time to file the appeal, and prays that the notice of appeal, which was filed late, be deemed properly filed. The applicant also sought a waiver of fees as he is a pauper.
2. The application is supported by the grounds on the face of the application and the applicant's affidavit, sworn on 14<sup>th</sup>

April 2025, where he states that, he was convicted and sentenced to

20 years for two counts of rape under the Sexual Offences Act No. 3 of 2006, in Criminal Case No. 23 of 2021 at Gichugu Law Court, in a judgment dated 1<sup>st</sup> July 2022; his appeal, in Kerugoya HCCRA Appeal No. E016 of 2022 was dismissed on 29<sup>th</sup> September 2023; he is dissatisfied with the judgment of the first appellate court and intends to appeal to this Court; he was unable to obtain the proceedings, and judgment in time to file his appeal; the delay in filing the appeal was unintentional and prays that his application for an extension of time be granted; he is in prison custody; he is unable to pay fees, and therefore he is a pauper. He believes the intended appeal has high chances of success.

3. The applicant stated further that the learned Judge of the High Court made an error;- by upholding his conviction and sentence based solely on the identification evidence provided by a single witness, which was not sufficiently established in court; by relying on a charge sheet that was flawed, as it was filed under **section 7** of the Sexual Offences Act No. 3 of 2006, a section that does not exist in that Act; by upholding his conviction and sentence, even though the elements of the offence were not sufficiently proven.
4. Further, the applicant complained that the evidence presented in court pertained to only one offence, while he was charged with two counts of rape; and that his defence, which was supported by eyewitnesses who were with him, but was not adequately evaluated by the court, leading to a

conclusion that

was prejudicial to him; the appeal has a high chances of success; and the respondent will suffer no prejudice if the application is allowed.

5. The respondent has not filed a response to the application, nor submissions.
6. I have considered the application and the affidavit in support. The issue for determination is whether to grant the applicant leave to appeal out of time. In **Mukuha vs. Republic (Criminal Application E053 of 2025) [2025] KECA 1749 (KLR) (24 October 2025)**, this Court held; -

***“The applicant... has approached the Court by Motion under rule 4 of the Court of Appeal Rules praying that time to lodge an appeal be extended and notice of appeal “... to be filed out of time be deemed as properly filed with leave of the court”; that he be granted waiver of fees as he is a pauper. He says in ground in support of the Motion and in his supporting affidavit that he is in prison custody and unable to pay fees “...therefore a pauper”;***

***The power donated by rule 4 of the rules is discretionary and the principles that apply in an application for extension of time were set out in the oft-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997 as follows:***

*“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of*

*time, are first, 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."*

7. 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. However, the applicant states that he received the proceedings late. The application remains unopposed. Secondly, the grounds of appeal outlined in the affidavit are not idle, and thirdly I take note of the bureaucracy between the courts and the prisons 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.
8. The applicant is to file the intended appeal within the next fourteen (14) days of this ruling.

**Dated and delivered at Nyeri this 11<sup>th</sup> day of December, 2025.**

**ALI-ARONI**

.....  
**JUDGE OF APPEAL**

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

*Signed*  
**DEPUTY REGISTRAR**