



REPUBLIC OF KENYA



**Barasa, v Republic (Criminal Application E117 of 2024)
[2025] KECA 2282 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2282 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E117 OF 2024
HA OMONDI, JA
DECEMBER 19, 2025**

BETWEEN

GABRIEL WAMBWIRE BARASA, APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application seeking leave to appeal out of time against both conviction and sentence against the judgment of the High Court of Kenya at Busia (Kihara, J.) dated 25th May 2014 in Misc. Criminal Application No 103 of 2006)

RULING

1. The applicant, Gabriel Wambwire Barasa, was charged in the magistrate's court at Bondo with the offence of rape contrary to section 3 of the *Sexual Offences Act*. He was tried, convicted and sentenced to serve life imprisonment on 25th April 2006. Aggrieved, he moved to the High Court on appeal vide HCCR Application No. 103 of 2006 which was dismissed in its entirety (Kihara, J.) on 25th day of May 2014. He however failed to file his appeal within the 14 days after delivery of judgment; but remains desirous of appealing to this Court.
2. In that regard, the applicant filed this application dated 11th July 2024 seeking leave for extension of time to file appeal out of time. The application is premised on the grounds that the applicant after being served with the proceedings and Judgment of the High Court counted on his family members to hire an advocate, to prepare and file his appeal. Eventually, they were unable to secure the services of an advocate due to financial constraints, a realization that dawned on him after the lapse of the period within which he ought to have filed the appeal.
3. The respondent did not react to the application either by way of a replying affidavit or written submissions.



4. I also take note that a copy of the release signal and letter sent to this Court dated 30th April, 2025, indicating that the applicant was released from lawful custody on grant of conditional pardon and remission of unexpired portion of his sentence, by the President of the Republic pursuant to powers conferred upon him by Article 133 of *the Constitution* of Kenya. This may explain why the applicant has not filed any written submissions in prosecution of his appeal. The only reasonable inference to draw is that the application has been overtaken by events; and the applicant is no longer interested in pursuing this application. I therefore mark the application as abandoned and order the file closed, with leave to the applicant to revive the application if he so desires.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF DECEMBER, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

