

**IN THE COURT OF
APPEAL AT
NYERI**

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

CRIMINAL APPLICATION NO. E171 OF

2024 BETWEEN

NELSON WAMBUGU KARIUKI.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application for an extension of time to file an appeal
against the Judgment of the High Court at Nyeri (Wakiaga, J.)
delivered on 7th February 2012*

in

HCCRA No. 240 of 2009)

RULING

1. Before the Court is an application by way of a notice of motion dated 8th December, 2024, said to be brought under **section 361** of the Criminal Procedure Act, **rules 43, 44 & 60** of the Court of Appeal Rules ('the Rules'), seeking for an extension of time to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application and further supported by the applicant's affidavit sworn on 8th December 2024, stating that he could not appeal on time because he was not supplied with the

High Court file to enable him file an appeal; he was charged with the offence of

defilement contrary to **section 8(1)** as read with **section 8(2)** of the Sexual Offences Act; he was convicted and sentenced to serve a life imprisonment; he lodged an appeal at Nyeri High Court which was dismissed on 7th February 2012; his appeal has a high chance of success; and the respondent will suffer no prejudice should the prayers sought be granted.

3. The hearing notice indicates that the respondent was served at least with the notice that the application was to be heard. It did not oppose the application in any form.
4. I have considered the application and the affidavit in support. The issue for determination is whether an extension of time to file an appeal out of time should be granted.
5. **Rule 4** of the Rules has clothed the Court with discretionary powers to extend any act required or authorized by the Rules. The rule states that; -

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

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.”

6. 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.
7. It is therefore fair and just to grant the applicant time to file the intended appeal. The appeal be filed within the next fourteen (14) days of this ruling.

Dated and delivered at Nyeri this 19th day of December, 2025.

ALI-ARONI

.....
JUDGE OF APPEAL

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

original.

Signed

DEPUTY REGISTRAR