

**IN THE COURT OF
APPEAL AT
NYERI**

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

CRIMINAL APPLICATION NO. E143 OF

2024 BETWEEN

STEPHEN GITHAE NJOROGE.....APPLICANT

AND

REPUBLIC.....RESPONDENT

*(Being an application for leave to file an appeal out of time against
the Judgment of the High Court of Kenya at Murang'a (Chirchir, J.)
delivered on 18th April, 2023*

in

HCCRA No. 26 of 2018)

RULING

1. Before the Court is an application by way of a notice of motion dated 12th September 2024, said to be brought **section 361** of the Criminal Procedure Code and **rules 43, 44 and 60** of the Court of Appeal Rules, 2022 (“the Rules”), seeking leave to file an appeal out of time and exemption from paying costs.
2. The application is predicated on the grounds on the face of the application and the applicant’s affidavit sworn on 12th September 2024 where he states that he was charged with

the offence of defilement contrary to **section 8(1) and 8(2)** of the Sexual Offences Act, he was tried, convicted, and sentenced to

serve life imprisonment on 11th April 2018; he appealed to the High Court at Murang'a and his appeal was dismissed on 18th April 2023; being dissatisfied with the judgement he is desirous of appealing to this Court; he is late as he was waiting for his relatives to get him a counsel which did not bear fruits; he is seeking leave to appeal out of time; the appeal if heard has very high chances of success.

3. The respondent has not filed a response and neither party has filed submissions.
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 the power to extend any act that is authorized or required by the Rules. It provides as follows; -

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.

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

“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.”

In **Mukuha vs. Republic (Criminal Application E053 of 2025) [2025] KECA 1749 (KLR) (24 October 2025)**, this Court held:

“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. The applicant has explained that since delivery of judgment he has been desirous of filing his intended appeal and being in prison he relied on the good will of his relatives and the

same has not come through but the intention still remains. I
find the

reason sufficient to allow the applicant time to pursue his Constitutional right.

8. The application is allowed. The intended memorandum of appeal be filed within the next 14 days of the date 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

