



REPUBLIC OF KENYA



KENYA LAW
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**Abutu v Republic (Criminal Application E046 of 2025)
[2026] KECA 88 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KECA 88 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E046 OF 2025
LK KIMARU, JA
JANUARY 27, 2026**

BETWEEN

JOSIAH MIAWA ABUTU APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file an appeal out of time from the Judgment of the High Court of Kenya at Homa Bay (D.S. Majanja, J) Dated 8th July, 2015 in HCCRA No. 109 of 2014)

RULING

1. Josiah Miawa Abuto, the applicant herein, was convicted of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. He was sentenced to serve life imprisonment by the Magistrate's Court at Rongo (CRC No. 23 of 2010) on 23rd May 2010. The applicant's appeal to the High Court (Vide Homa Bay Criminal Appeal No. 109 of 2014) was dismissed on 8th July, 2015. The applicant filed the present application seeking to be granted leave to file appeal out of time on 5th July, 2025. This was after a period of ten (10) years after the appeal was dismissed by the Superior Court. The applicant explained the reason for the delay in lodging the appeal in time to be due to fact the that he was not availed typed copies of the proceedings and Judgment in time to enable him lodge the appeal. The applicant stated that he had made several attempts to file the appeal but had been frustrated. The applicant did not say what prevented him from filing the appeal or the application all this time before filing the present application.
2. The respondent did not object to the applicant being granted extension of time to file the appeal out of time, though they observed that the delay of ten (10) years in filing the present application was inordinate.



3. Rule 4 of the Court of Appeal Rules gives this Court unfettered discretion to extend time for any steps required to be taken within the time prescribed by the Rules. In the present application, the applicant gave the reason for delay for failure to lodge the appeal in time to be non-supply of certified copies of the proceedings by the Superior Court. Although the respondent did not oppose the application, this Court is not convinced that a delay of ten (10) years before the present application was filed is excusable. The applicant has not been diligent. In fact, he has been indolent and slept on his right of appeal to this Court. The period of delay is inordinate.
4. This application lacks merit. It is hereby dismissed.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF JANUARY, 2026.

L. KIMARU

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

I certify that this is a true copy of original.

DEPUTY REGISTRAR.

