

**IN THE COURT OF
APPEAL AT
NYERI**

(CORAM: MUMBI NGUGI, JA)

CRIMINAL APPLICATION NO. E052 of
2025

BETWEEN

ISAACK KURIA KABUGA.....APPLICANT
AND
REPUBLIC.....RESPONDENT

*(Being an application for extension of time within which to lodge a
notice of appeal from the judgment of the High Court in Nyeri
(Rutto J.*

in
HCCRA E004 OF 2022)

RULING

1. The applicant was convicted of the offence of defilement in SO Criminal Case No. 64 of 2020 by the Chief Magistrate's Court in Nyeri and sentenced to life imprisonment. Dissatisfied with the conviction and sentence, he appealed to the High Court at Nyeri in HCCRA No. E004 of 2022. In its judgment dated 11th September 2024, the High Court dismissed his appeal against conviction but reduced the sentence to 30 years' imprisonment.
2. Still aggrieved, the applicant sought leave to appeal out of

time in Criminal Application No. E155 of 2024, which was heard and allowed by Lesiit, JA in a ruling dated

5th December 2024, but the applicant failed to lodge a notice of appeal within the period granted.

3. This background emerges from the applicant's application now before me, dated 10th September 2025 and the affidavit in support thereof of the same date. He seeks in the said application extension of time within which to lodge a notice of appeal against the High Court judgment; that the notice of appeal already lodged out of time be deemed as properly filed; for leave to proceed as a pauper and waiver of filing fees, and any other relief that the Court may deem just.
4. In his affidavit, he reiterates his contention that he is in custody and indigent and therefore unable to pay court fees; that his constitutional right of appeal under Article 50(2)(q) will be rendered illusory if the application is not allowed; that the intended appeal raises arguable points of law with good prospects of success; that the delay in filing the notice of appeal was not deliberate but was caused by his inability to obtain copies of the trial and High Court proceedings and judgment in time; that he acted diligently within his limited capacity; and that the earlier application for extension of time was heard and allowed in his

absence. He states, further, that

although his sentence was reduced from life imprisonment to 30 years, he ought to have been acquitted.

5. The respondent, the Director of Public Prosecutions (DPP) opposes the application by submissions dated 2nd October 2025. It submits that the applicant is currently serving an unlawful sentence of 30 years as section 8(2) of the Sexual Offences Act prescribes life imprisonment for the offence he was charged with. The respondent submits that the applicant has not demonstrated good cause for the considerable delay in filing the notice of appeal; and that he has not exhibited a draft memorandum of appeal to illustrate the arguable grounds. It prays, therefore, that the orders sought be declined.
6. The issue for determination is whether I should exercise discretion under rule 4 of this Court's Rules to extend time for the applicant to file his notice of appeal, and for the notice of appeal already filed to be deemed as duly filed. This requires examination of whether the applicant has met the threshold for extension of time under rule 4 and section 349 of the Criminal Procedure Code (CPC).

7. In an application for extension of time, the Court is required to consider the length of the delay from the date of the judgment the applicant seeks to appeal against, and the reasons advanced for the delay. It should also consider whether the intended appeal is arguable or raises issues deserving the Court's consideration, and evaluate any prejudice to the respondent if time is extended. Under section 349 of the CPC, a person seeking to file an appeal from a criminal conviction must lodge a notice of appeal within fourteen days of the order or sentence appealed against. Under the said provision, the appellate court may, for good cause, admit an appeal out of time.
8. In the present case, the decision that the appellant seeks to appeal from was rendered on 11th September 2024. He did not move to file his appeal within the timelines prescribed under section 349 of the CPC. He, however, applied, successfully, for leave to file a notice and record of appeal, the leave, according to the applicant, having been granted in the ruling of Lesiit JA of 5th December 2025.
9. The applicant's reasons for failing to file his appeal to this Court following the ruling granting him leave in December

2024 are that he is indigent, was unrepresented, and that he had difficulties in obtaining the judgment and proceedings from the superior court. More than nine months have elapsed between the date he was given leave and the filing of this application, on 10th September 2025. He has not attached a copy of the ruling, so it is not clear whether he was given timelines within which to file his appeal. He states that the ruling was delivered in his absence, and that he was not able to obtain copies of the proceedings.

10. I note that the respondent, while it opposes the application, does so on the basis that the applicant is serving an unlawful sentence, the High Court having reduced his sentence from the mandatory sentence of life imprisonment provided under section 8(1) as read with section 8(2) of the Sexual Offences Act to 30 years imprisonment. That, in itself, is not a basis for denying the applicant extension of time to file his appeal. While he has not annexed a draft memorandum of appeal, it can be gleaned from his affidavit in support of his application that he still seeks to agitate the issue of his conviction.
11. The applicant has averred that he is unrepresented and

indigent. He is facing a 30-year sentence for the offence
of

defilement of a minor below 11 years of age. However, even the worst offender merits an opportunity to agitate his appeal. He cannot, however, be given the licence to agitate applications such as this repeatedly, without taking further action thereon.

12. In the circumstances, I will allow the application dated 10th September 2025. The notice of appeal filed by the applicant is deemed as duly filed. He shall file his memorandum of appeal within 30 days from the date hereof, failing which the leave granted herein shall lapse.

Dated and delivered at Nyeri this 30th day of January 2026.

MUMBI NGUGI

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR