

**IN THE COURT OF
APPEAL AT
NYERI**

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

CRIMINAL APPLICATION NO. E006 OF 2026

BETWEEN

SIMON NJOGU KEHIU.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(Being an application for leave to appeal out of time against the Judgment of the High Court of Kenya at Kerugoya (J. K. Ng'arng'ar, J.) delivered on 28th May 2025

in

HCCRA No. E007 of 2022)

RULING

1. Before the Court is an application by way of a notice of motion dated 7th January 2026, brought under **Articles 48, 50(1), 50(2)(q) & 159(2)(d)** of the Constitution, **sections 3A & 3B of** the Appellate Jurisdiction Act, **rules 4, 77, 82 and 115** of the Court of Appeal Rules 2022 (*'the Rules'*), seeking leave to appeal out of time.
2. The application is predicated on the grounds of the face of

the application, which have been rehashed in
the applicant's

affidavit sworn on 7th January 2026, stating that he was convicted and sentenced in **Sexual Offence Case No. 6 of 2019**, and being dissatisfied with the decision of the trial court, he appealed to the High Court in **Criminal Appeal No. E007 of 2025**; on 28th May 2025, the High Court delivered its judgment upholding the applicant's conviction but setting aside the life sentence substituting it with a sentence of thirty (30) years' imprisonment; he is aggrieved by the said judgment and sentence and desires to appeal to this Court; due to his incarceration, poverty, lack of legal knowledge, limited access to legal resources, inability to pay filing fees, and the delayed access to the High Court judgment and record of proceedings, he was unable to file a notice of appeal and memorandum of appeal within the prescribed time; he has an arguable appeal as the intended appeal raises serious and weighty points of law, including misdirection and misapprehension of evidence by the first appellate court, reliance on testimony of child witnesses of tender years without strict compliance with the law, material inconsistencies in the prosecution case, and the legality, proportionality and constitutionality of the sentence imposed; the delay in filing the intended appeal was neither inordinate nor deliberate and has been reasonably explained and occasioned by circumstances beyond the applicant's control; it is in the interest of justice, fairness and equity that this Court exercises its discretion in the applicant's favour.

3. The applicant has filed submissions dated 13th January 2026, where he outlines five primary issues for the Court to determine: jurisdiction and discretion to extend time, the reason for the delay, the arguability of the intended appeal, the applicant's status as a pauper, and the broader interests of justice.
4. On jurisdiction and delay, the applicant contends that the Court has wide discretion under **rule 4** of the Rules to extend time where sufficient cause is shown. In support, he relies on **Nicholas Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others [2014]**.
5. On the arguability of the appeal, to justify the extension, the applicant argues that his intended appeal is not frivolous. He identifies several triable issues, including whether the High Court properly re-evaluated evidence, the legality of relying on child witness testimony, and whether the sentence imposed was proportionate and constitutional; he argues that denying the application would cause irreparable prejudice, as he would continue serving a lengthy sentence without exhausting his right to appeal, while the State would suffer no prejudice if the case proceeds. In support of this contention, he relies on **Republic vs Karisa Chengo & 2 Others (2017) eKLR**, where the Court held that access to justice must be real and not illusory.

6. In response, the respondent filed submissions dated 15th January 2026 and does not oppose the application.

7. I have considered the application, the affidavit in support and the submissions. The issue for determination is whether the applicant is deserving of an extension of time to file his appeal.
8. **Rule 4** of the Court of Appeal Rules 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.

9. 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.”

10. The judgment meant to be appealed was delivered on 28th of May 2025, and the application seeking leave was filed on 7th

January 2026, about six months thereafter. The applicant has, in my view, sufficiently explained the reasons for the delay, including the delay in obtaining copies of the proceedings. He has alluded to the likely ground of appeal which do not appear idle. The delay is not inordinate either.

11. The application is allowed. The memorandum of appeal must be filed within the next 30 days of today's date.

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

ALI-ARONI

JUDICIARY

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR

REPUBLIC OF KENYA