



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Application E003 of 2026)
[2026] KECA 68 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 68 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E003 OF 2026**

**A ALI-ARONI, JA
JANUARY 30, 2026**

BETWEEN

IBRAHIM MIKIHA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the Judgment of the High Court of Kenya at Murang'a (Chirchir, J.) delivered on 31st May 2023 in HCCRA No. 11 of 2021)

RULING

1. Before the Court is an application by way of a notice of motion dated 5th January 2026 brought under Articles 48, 50(1), 50(2)(q) and 159(2)(d) of the Constitution; sections 3A and 3B of the Appellate Jurisdiction Act and rules 4, 41 and 42 of the Court of Appeal Rules, 2022 ('the Rules'), seeking leave to appeal out of time.
2. The application is predicated on the grounds on the face of the application, and the applicant's affidavit dated 5th January 2026, stating that since the dismissal of his appeal at the High Court, the applicant has been incarcerated at Nyeri Maximum Prison which severely limited his access to legal resources, yet he intends to appeal against both conviction and sentence; he was not represented by counsel at critical stages due to his incarceration and lacked of means, which contributed to delays in pursuing the appeal; he is indigent and unable to meet the costs of filing the appeal; the interests of justice requires that he be granted leave to appeal as a pauper and that there exists substantial and arguable points of law and fact meriting the attention of this Court; he was convicted on 30th June 2021 and sentenced to 15 years' imprisonment for defilement of a minor and filed Criminal Appeal No. 11 of 2021 which was dismissed on 31st May 2023.
3. He avers further that he has substantial and arguable grounds for appealing; the sufficiency and reliability of the evidence upon which the High Court affirmed his conviction is wanting; non-



compliance with section 124 of the Evidence Act; discrepancies in the identification of the applicant as the perpetrator and inconsistencies in medical evidence regarding penetration; the delay in filing this application is not due to negligence on the applicant's part, but arises from his incarceration, inability to access the High Court judgment and the trial court proceedings, and lack of access to legal knowledge and guidance necessary to prepare the appeal.

4. The applicant has filed submissions dated 14th January 2026, and submits that rule 4 of the Rules grants the Court wide discretion to extend time in the interest of justice. He contends that in exercising this discretion, the Court is guided by well-established principles such as length of delay, reason of delay, arguability of intended appeal and degree of prejudice to the respondent.
5. To explain the delay in approaching the court, the applicant cites his ongoing incarceration at Nyeri Maximum Prison and the logistical hurdles he faced in obtaining certified copies of the High Court judgment, trial records and reasons enumerated in his affidavit. Further, he contends that his intended appeal is not frivolous and raises several bona fide legal issues, including whether the lower courts correctly applied the Evidence Act as regards corroboration and whether the identification of the perpetrator was free from error; the sufficiency of medical evidence regarding penetration and whether the High Court properly discharged its duty to re-evaluate the entire evidence record.
6. The applicant cites Article 48 regarding access to justice and Article 50(2)(q) concerning fair trial rights, as well as Article 159(2)(d) urging the Court to prioritize substantive justice over technicalities.
7. The applicant has not filed submissions. In response to the application the respondent filed submissions dated 15th January 2026 and does not oppose the application to appeal out of time.
8. I have considered the application, the affidavit in support and the submissions. The issue for determination is whether to grant the applicant an extension of time to file his appeal out of time.
9. Rule 4 of the Rules 2022 provide 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.

10. 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.”
11. The applicant has explained the delay in filing his appeal as being late receipt of the proceedings and the fact that he is unrepresented and unable, therefore, to be effective, as he is incarcerated. The explanation is plausible. The Court appreciates the hurdles faced by prisoners in accessing the Court registries and the delay likely to be caused by the bureaucracy involved.
12. The application having not been opposed, the applicant is hereby directed to file his memorandum of appeal within the next 14 days.

DATED AND DELIVERED AT NYERI THIS 30TH DAY OF JANUARY, 2026.

ALI-ARONI



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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

