



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Muriithi v Republic (Criminal Application E064 of 2025)
[2026] KECA 16 (KLR) (14 January 2026) (Ruling)**

Neutral citation: [2026] KECA 16 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E064 OF 2025
A ALI-ARONI, JA
JANUARY 14, 2026**

BETWEEN

JOSEPH WAIRUGUINI MURIITHI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file an appeal against the conviction and sentence of the High Court of Kenya at Nyeri (J. Ngaah, J.) delivered on 8th May, 2015 in HCCRA No. 265 of 2010)

RULING

1. Before the Court is an application by way of a notice of motion dated 21st November 2025, brought under rule 4 of the Court of Appeal Rules 2022 ('the Rules'), seeking that the time within which to lodge the notice of appeal be extended, and the notice of appeal filed out of time be deemed as duly and properly filed.
2. The application is predicated on the grounds on the face of the application and the applicant's affidavit stating that the intended appeal raises arguable issues with high chances of success; the delay in lodging the notice of appeal was not deliberate but was occasioned by the applicant's incarceration, lack of legal representation, inability to raise filing fees, and the failure by the High Court to supply him with typed proceedings and judgment within reasonable time.
3. It is asserted that the applicant has always had a clear intention to appeal, and any delay should not be visited upon him; further he states that in his judgement the learned Judge erred in upholding the conviction and sentence despite the prosecution having failed to prove the essential ingredients of the offence, including age, penetration, and identification, as required in law.
4. The applicant contends further, that the learned Judge erred in upholding a conviction founded on unreliable evidence, where the burden of proof was not satisfied; the applicant's sworn defence; was not



adequately considered, thereby prejudicing the applicant; the learned Judge erred in failing to consider and apply section 333(2) of the Criminal Procedure Code, thereby omitting to factor in the period the applicant spent in remand custody; the applicant prays that the court do order the supply of the original trial court's record, proceedings, and judgment to enable him to prepare his appeal.

5. The applicant further avers that he was charged, tried, convicted, and sentenced to serve life imprisonment on two counts for the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* No. 3 of 2006, in Criminal Case No. 167 of 2008 at the Nyeri Law Court, in a judgment delivered on 26th October, 2010; he lodged an appeal at Nyeri vide HCCRA No. 265 of 2010, which was dismissed on the 8th day of May 2015.
6. The respondent has not filed a response.
7. Neither party has filed submissions.
8. I have considered the application and the affidavit in support. The issue for determination is whether the applicant is deserving of an extension of time to file his appeal.

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 *Boniface Emuria Loro vs. Republic* [2003] KECA 91 (KLR), this Court was faced with an application for leave to file an appeal out of time and the main reason for the delay in filing the appeal within the prescribed period was that the applicant was not supplied with a copy of the judgment in time. The application was allowed.
10. A litigant has the Constitutional right to pursue his matter to the highest level available under the law. The applicant was charged before the Magistrate's Court, was dissatisfied with the conviction and sentence, appealed to the High Court, and is dissatisfied and seeks to appeal to this Court. He has given various reasons for the delay in lodging his appeal, including that he did not receive the proceedings and judgment on time, and he is unrepresented. He has also stated that his defence was not considered and that the case was not proved to the required standards.
11. In the often-cited case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi*, Civil Application No. Nai 255 of 1997, this Court stated 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.”

12. I find that the applicant has sufficiently explained the delay, and that, at this point, the intended grounds of appeal set out in the application cannot be said to be idle.
13. I allow the application. The notice of appeal and the record of appeal be filed within the next 14 days of this ruling.



DATED AND DELIVERED AT NYERI THIS 14TH DAY OF JANUARY, 2026.

ALI-ARONI

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

