



REPUBLIC OF KENYA



KENYA LAW
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**Wambui v Republic (Criminal Application E004 of 2026)
[2026] KECA 97 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 97 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E004 OF 2026
A ALI-ARONI, JA
JANUARY 30, 2026**

BETWEEN

SAMUEL MWANGI WAMBUI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to lodge and serve a notice of appeal and the record of appeal out of time against the Judgment of the High Court of Kenya at Murang'a (K. Kimondo. J.) delivered on 24th May, 2018 in HCCRA No. 78 of 2016)

RULING

1. Before the Court is an application by way of a notice of motion dated 2nd 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 lodge and serve a notice of appeal and the record of appeal out of time. He also seeks to be considered a pauper.
2. The application is predicated on the grounds on the face of the application and further supported by the applicant's affidavit sworn on 5th January 2026, stating that the delay in lodging the intended appeal was occasioned by circumstances beyond his control, was not deliberate, contumelious, or intended to obstruct the course of justice, and that upon becoming aware of his right to appeal to this Court and upon obtaining minimal legal assistance, the applicant moved with reasonable promptitude to file the present application; the intended appeal is arguable and raises weighty points of law and constitutional interpretation, including but not limited to: whether the plea of guilty entered in a serious sexual offence attracting a mandatory life sentence met the legal and constitutional threshold of an unequivocal plea; whether the applicant's impaired intellectual capacity affected the validity and voluntariness of the plea; whether the imposition of a mandatory life sentence under section 8(3) of the *Sexual Offences Act* violates Articles 25(c), 28, 29 and 50(2)(q) of *the Constitution* in light of evolving



sentencing jurisprudence; he was convicted in Criminal Case No. 888 of 2015 and sentenced to life imprisonment on 15th June 2015 for the offence of defilement; his appeal was dismissed on 24th May 2018; he is desirous of appealing to this Court but was unable to file a notice of appeal within the prescribed fourteen (14) days from the date of the High Court judgment.

3. Further he states that at the time the judgment was delivered he was unrepresented; thereafter he was incarcerated and unaware of the legal timelines governing appeals to the Court of Appeal; he has limited intellectual capacity, a fact acknowledged in the High Court judgment, which adversely affected his understanding of the appeal process and his ability to take timely steps; while in custody, he encountered difficulty in accessing the typed judgment and legal assistance necessary to pursue an appeal; the delay in filing the intended appeal was neither deliberate nor intended to abuse the court process but arose from excusable and well-explained circumstances.
4. The applicant filed submissions dated 13th January 2026. The applicant acknowledges a delay in filing but argues it is only inordinate in a mathematical sense rather than a legal one, given his circumstances, further he has rehashed the averments in his affidavit. He contends that the delay was neither deliberate nor in bad faith and that he moved with promptitude once he received minimal legal assistance within the prison system.
5. The applicant asserts that the intended appeal is arguable and raises bona fide legal and constitutional issues which have been outlined in his application and he faces irreversible injustice if denied the chance to appeal while serving a life sentence.
6. In response the respondent filed submissions dated 15th January 2026 and does not oppose the application to appeal.
7. I have considered the application, the affidavit in support and the submissions. The issue for determination is whether the applicant is deserving of leave to lodge and serve a notice of appeal and the record of appeal out of time and whether he can be deemed as a pauper.
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. The applicants' reasons for the delay are sufficiently explained. Although the delay is long, the Court appreciates the hurdles prisoners face in obtaining proceedings. The Court further observes that the applicant was unrepresented and faces a life imprisonment. Further, he has raised serious legal issues that ought to be heard on appeal. 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 application is therefore allowed. The appeal be filed within the next 14 days of this ruling.

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

