

IN THE COURT OF
APPEAL AT
ELDORET
(CORAM: GACHOKA, J.A - IN
CHAMBERS) CRIMINAL APPLICATION NO.
E006 OF 2025

BETWEEN
EKIDAM EKITELA.....APPLICANT
AND
REPUBLIC
.....
RESPONDENT

(An application for leave to appeal out of time against the conviction and sentence of the High Court of Kenya at Eldoret (Kimondo, J.) delivered on 15th July 2014

in

HCCRA No. 230 of 2011)

RULING

1. In his Notice of Motion dated 18th February 2025, the applicant seeks leave of this Court to appeal out of time from the conviction and sentence upheld by the Eldoret High Court in ***HCCRA No. 230 of 2011***. The applicant was charged in ***Eldoret CM (SO) Case No. 1039 of 2010*** with the offence of defilement contrary to section 8(1) as read with 8(2) of the Sexual Offences Act. The trial court convicted him as charged and sentenced to life imprisonment. The appellant appealed before the Eldoret High Court. According to the applicant, his appeal on sentence and conviction was dismissed by *Kimondo J.*
2. The applicant is aggrieved by those findings. In support of his

application, the applicant annexed his supporting affidavit
sworn

on 18th February 2025 and attributes the delay to failure to be supplied with court proceedings. He urged this Court to allow his application. He did not annex a memorandum of appeal but the grounds of the intended appeal are listed in the grounds in support of the application.

3. The respondent did not oppose the application. Through Principal Prosecution Counsel Mr. S.G Thuo, it filed written submissions dated 3rd February 2026. It was argued that the reason for the delay is plausible given his incarceration. He was therefore deserving of the exercise of the discretionary powers donated to this Court.
4. The discretion set out in rule 4 of the Court of Appeal Rules 2022 is wide and discretionary. The guiding principles are not exhaustive. However, the Court is urged to take into account the length of delay involved, the reasons for delay, possible prejudice on any party, the conduct of the parties, the need to balance competing interests, the need to protect a party's opportunity to fully litigate his or her dispute and the chances of succeeding. (See **Henry Mukora Mwangi vs. Charles Gichina Mwangi**, Civil Application No. Nai. 26 of 2004)

5. I have considered the reason advanced by the applicant, the respondent's written submissions and the law. The only ground given for the delay in filing the application is that the applicant was not given copies of the proceedings and judgement.
6. I take judicial notice that the applicant is currently serving a life sentence in jail. I may feel mercy for the applicant but a delay of approximately 11 years and seven months, which is not satisfactorily explained is difficult to excuse. According to the applicant, the appeal was dismissed in the year 2014 and he filed this application on 18th February 2025. Why such a long delay? Many appellants serving jail sentences do file appeals though courts are lenient on delays for such appellants, a delay of more than 10 years ought to be explained plausibly.
7. Accordingly, I am not satisfied that the application has met the threshold for the exercise of discretion by this Court and I dismiss the application in its entirety.

Dated and delivered at Eldoret this 20th day of February, 2026.

M. GACHOKA C.Arb, FCI Arb.

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR