



**HOM v Republic (Criminal Application E050 of 2025)  
[2026] KECA 268 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KECA 268 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E050 OF 2025  
LK KIMARU, JA  
FEBRUARY 11, 2026**

**BETWEEN**

**HOM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time to appeal out of time from the Judgment of the High Court of Kenya at Kakamega (S.N. Mbungu, J) dated 15th July, 2024 in HCCRA No. 68 of 2023)*

**RULING**

1. The applicant, HOM was convicted of the offence of incest contrary to section 20(1) of the [Sexual Offences Act](#). He was sentenced to serve forty (40) years imprisonment. His appeal to the High Court was dismissed on both conviction and sentence on 15<sup>th</sup> July, 2024. The applicant wishes to exercise his right of second appeal to this Court. The applicant moved the court by notice of motion substantially under Rule 4 of the Court of Appeal Rules seeking to be granted leave to appeal against the said decision out of time. The applicant explained the reason for delay to be; He was not made aware when the Judgment was delivered by the High Court; and that he was hampered from filing the appeal in time due to the fact that his advocate was unable to access the Superior Court’s file in time to enable him file the appeal. The applicant pleaded with the Court to grant the application to enable him have a chance to ventilate his good appeal before this Court. The application is supported by the annexed affidavit of the applicant.
2. The application is unopposed. Under Rule 4 of the Court of Appeal Rules, this Court has unfettered discretion whether or not to allow an application for extension of time for any steps to be taken within the time prescribed by the Rules. In the present application, the applicant explained the reason for delay in lodging the appeal in time. He was not made aware when the Judgment, that is the subject of the intended appeal, was delivered. Even when he became aware of the contents of the said Judgment, his advocate could not access the Court file to enable him prepare the appeal and file the appeal in



time. The reasons given by the appellant are excusable. The period of delay was not inordinate. The applicant should be given a chance to ventilate his final appeal before this Court.

3. The application has merit. It is hereby allowed. The applicant is hereby granted leave to file appeal out of time. The notice of appeal shall be filed and served within fourteen (14) days of today's date.

**DATED AND DELIVERED AT KISUMU THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of original.

**DEPUTY REGISTRAR.**

