



**Mbugua v Republic (Criminal Application E014 of 2024)
[2026] KECA 304 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KECA 304 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CRIMINAL APPLICATION E014 OF 2024
JM MATIVO, JA
FEBRUARY 19, 2026
[IN CHAMBERS]**

BETWEEN

JOHNSTONE MBUGUA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the judgment of the High Court of Kenya at Kabarnet (R. Ngetich, J.) dated 15th June 2023 in Criminal Appeal No. E024 of 2021)

RULING

1. By his un-dated application the subject of this ruling, the applicant seeks leave to appeal out of time against the judgement delivered by the High Court in Kabarnet High Court Criminal Appeal No E024 of 2021 delivered by Ngetich J. on 15th June 2023.
2. The grounds in support of the application are contained in his undated supporting affidavit annexed thereto. The applicant states that he was convicted and sentenced to serve 20 years imprisonment by the Chief Magistrates' Court in Eldama Ravine on the 3rd day of November 2021 for the offence of defilement contrary to Section 8 (1) as read with Section 8 (3) of the *Sexual Offences Act* in Criminal Case Number E001 of 2020. His appeal to the High Court being Kabarnet High Court Criminal Appeal Number E024 of 2021 was dismissed for lack of merit on 15th June 2023 and immediately after it was dismissed, he agreed with his family that they would secure an advocate for him to file an appeal on his behalf, but this was not done, hence the delay. The applicant maintains that the intended appeal has overwhelming chances of success.
3. As at the time of writing this ruling on 19th February 2036 at 9 a.m, the respondent had not filed any response.



4. Rule 4 of the *Court of Appeal Rules* gives the Court unfettered discretion to

“... 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 ..., on such terms as it thinks just.”

The Supreme Court in *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* [2018] eKLR stated:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the Court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

5. Though it is not clear the exact date this application was filed, it is serialized as having been filed in 2024. The attached memorandum of appeal is dated 17th May 2024. It appears the application has been pending in Court for over one and a half years, which is deplorable. Clearly, the greater part of the delay can only be attributed to the Court. I am inclined to exercise my discretion in favour of the applicant. The annexed memorandum of appeal dated 15th June 2024 is deemed as properly filed. The applicant is granted 60 days from today to file the record of appeal

DATED AND DELIVERED AT ELDORET THIS 19TH FEBRUARY, 2026.

J. MATIVO

.....

JUDGE OF APPEAL

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

signed.

DEPUTY REGISTRAR

