

**IN THE COURT OF APPEAL
AT NAKURU**

CORAM: MATIVO, JA (IN CHAMBERS)

**CRIMINAL APPLICATION NO. NAK. E002 OF
2026 BETWEEN**

**EMMANUEL KIBET NGENO.....APPLICANT
AND**

REPUBLIC.....RESPONDENT

(Being an application for leave to appeal out of time from the sentence and conviction of the High Court of Kenya at Kericho (J. R. Karanja, J.) dated 20th September 2025

in

CRA No. E018 of 2024).

RULING

1. The application before the Court is dated 19th January, 2026. The main prayer is for extension of time to appeal to the Court of Appeal against the judgment issued in HCCRA No. E018 of 2024.
2. The applicant, Emmanuel Kibet Ngeno was arraigned, and tried before the Chief Magistrates' Court in Criminal Case No. E014 of 2022 at Kericho with the offence of defilement contrary to section 8 (1) as read together with section 8 (2) of the Sexual Offences Act. After a full trial, the applicant was convicted as charged and sentenced to life

imprisonment. The applicant's

appeal to the High Court was dismissed on both conviction and sentence. The applicant failed to lodge his notice of appeal within the statutory-stipulated time of fourteen (14) days.

3. The applicant in his supporting affidavit sworn on 19th January 2026 contends that the lack of a copy of the judgment made it impossible for him to appeal on time.
4. In response to the application vide written submissions dated 11th February 2026, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the delay of two months in applying for extension of time which is not inordinate.
5. 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.* I shall adopt the findings of the Supreme Court in **Andrew Kiplagat Chemaringo vs.**

Paul Kipkorir

Kibet [2018] eKLR, the Court ruled that;

***“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."

6. I have considered the reasons for the delay advanced by the applicant as set out in the motion and the supporting affidavit. I note that, there has been a delay of two months in bringing the instant application. I find that the delay is not inordinate. This Court is also satisfied by the reasons advanced by the applicant for his failure to lodge the appeal in time. In the circumstances, I'm inclined to exercise my discretion in the applicant's favour. Accordingly, the application dated 19th January 2026 is hereby allowed. The applicant shall file his appeal within 60 days from the date of this ruling.

Dated and delivered at Nakuru this 12th day of February, 2026.

J. MATIVO

.....
**.... JUDGE OF
APPEAL**

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

DEPUTY REGISTRAR