



**Ngara v Republic (Criminal Application E093 of 2025)
[2026] KECA 218 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KECA 218 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E093 OF 2025
JM MATIVO, JA
FEBRUARY 12, 2026**

BETWEEN

DAVID GITHINJI NGARA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the conviction and sentence of the High Court of Kenya at Nakuru (M. A. Odero, J.) dated 19th June 2017 in CRA No. 70 of 2014)

RULING

1. The application before the Court is dated 21st November, 2025.
The main prayer is for extension of time to appeal to the Court of Appeal against the judgment issued in HCCRA No. 70 of 2014.
2. The applicant, Githinji David Ngara was arraigned, tried and convicted by the Chief Magistrate Court in Criminal Case No. 110 of 2010 at Nakuru for 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 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 21st November 2025 contends that the 8 years delay to file his notice of appeal was not inordinate since it was occasioned by him not being unrepresented, indigent and ignorant of the procedural requirements for lodging a second appeal. The applicant also deponed that after the dismissal of his appeal he was transferred from Nakuru Main Prison to Naivasha Maximum Security Prison where he has limited access to legal material and no means to instruct counsel and that he got legal assistance in September 2025 through the Justice Defenders legal aid programme.



4. In response to the application vide written submissions dated 17th December, 2025, Mr. Omutelema Senior Assistant Director of Public Prosecution has opposed the application maintaining that the delay of 8 years in applying for extension of time is inordinate and the explanation for the delay is unreasonable and unsatisfactory.
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 8 years advanced by the applicant as set out in the motion and the supporting affidavit. Though the explanation offered is not convincing, I note that the applicant is serving a life sentence and for this reason, in exercise of my discretion, I am persuaded that the interests of justice favour that he gets the opportunity to appeal to this Court, which may be his last chance in the judicial hierarchy. Therefore, for this reason, I allow this application and direct that the applicant shall file his appeal within 60 days from today.

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

