

**IN THE COURT OF
APPEAL AT KISUMU
(CORAM: KIMARU, JA (IN CHAMBERS))**

**CRIMINAL APPLICATION NO. E059 OF
2025 BETWEEN**

HERBERT NYAMAGE.....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 Kisii (Gichoi, J)

in

**HCCRA No. E048 of
2024)**

***** RULING**

1. The applicant, **Herbert Nyamage** was convicted by the trial Court of the offence of defilement contrary to **section 8(1)** as read with **section 8(2)** of the **Sexual Offences Act**. He was sentenced to serve twenty (20) years imprisonment. His appeal to the High Court was dismissed. The applicant desires to appeal against the said decision to this Court. He has filed the present application seeking to be granted extension of time to appeal out of time. The applicant states that he was prevented from filing the appeal in time due to financial challenges that his family had. They could not raise legal fees in time to enable them instruct an advocate to lodge the appeal on his behalf. He also had challenges in

securing the Judgment of the High Court

in time to enable him file the appeal. The application is supported by the annexed affidavit of the applicant.

2. The respondent did not oppose the application. **Victorine Kitoto** swore a replying affidavit on behalf of the respondent in which she indicated her wish not to oppose the application broadly in the interests of justice. This Court's jurisdiction under **Rule 4** of the **Court of Appeal Rules** grants it unfettered discretion to extend or not extend time for any steps to be taken outside the period prescribed by the Rules. In the present application, this Court is satisfied by the reasons given by the applicant that prevented him from filing the appeal in time. The reasons are excusable. The period of delay was not inordinate.
3. The application has merit and is hereby allowed. The applicant is hereby granted leave to 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 10th day of February, 2026.

L. KIMARU

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR.