

**IN THE COURT OF APPEAL  
AT NAKURU**

**CORAM: MATIVO, JA (IN CHAMBERS)**

**CRIMINAL APPLICATION NO. NAK. E089 OF**

**2025 BETWEEN**

**MESHACK KIPKORIR ROTICH.....APPLICANT  
AND**

**REPUBLIC.....RESPONDENT**

*(Being an application for leave to appeal out of time from the conviction and sentence from the judgment of the High Court of Kenya at Bomet (R. Korir, J.) dated 5<sup>th</sup> November 2024*

*in*

***Criminal Case No. E042 of 2022).***

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**RULING**

1. The application before the Court is dated 10<sup>th</sup> September, 2025. The main prayer is for extension of time to appeal to the Court of Appeal against the judgment issued in HCCRA No. 42 of 2022.
2. The applicant, Meshack Kipkorir Rotich was arraigned, tried and convicted by the Chief Magistrates' Court in Criminal Case No. 68 of 2020 at Bomet 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, h 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 10<sup>th</sup> September 2025 contends that the lack of a copy of the judgment made it impossible for him to file his appeal on time coupled with the fact that efforts to hire an advocate to act for him were all in vain.
4. In response to the application vide written submissions dated 17<sup>th</sup> December 2025, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to the lengthy sentence meted upon the applicant.
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 v 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. The applicant has not stated the particular judge who dismissed his first appeal and when the said appeal was dismissed. The respondent has also not annexed a copy of the impugned decision. This places the Court in an awkward position for the application is not complete. I cannot ascertain with precision when time started running for the applicant to lodge his notice of appeal as the applicant has not disclosed the date when the judgement was delivered. Consequently, I’m unable to exercise my discretion if at all in the applicant’s favour.
7. In the circumstances, I am unable to exercise my discretion.

The notice of motion dated 10<sup>th</sup> September 2025 is

hereby

struck out with leave to the applicant to file a fresh application with full details on the date of judgment of the High Court within 45 days from today.

Orders accordingly.

Dated and delivered at Nakuru this 12<sup>th</sup> day of February, 2026.

**J. MATIVO**

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

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

*Signed.*

**DEPUTY REGISTRAR**