



REPUBLIC OF KENYA



KENYA LAW
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**Setek v Republic (Criminal Application E090 of 2025)
[2026] KECA 217 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KECA 217 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E090 OF 2025
JM MATIVO, JA
FEBRUARY 12, 2026**

BETWEEN

PATU SETEK APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for extension of time to appeal from the ruling
and order of the High Court of Kenya at Narok (C. Kariuki, J.)
dated 13th August 2025 in Criminal Misc. Appl. No. E035 of 2025)*

RULING

1. The application before the Court is dated 6th November, 2025.
The main prayer is for extension of time to appeal to the Court of Appeal against the ruling and order issued in HCCRA Misc Appl No. E035 of 2025.
2. The applicant, Patu Setek was arraigned and tried before the Chief Magistrate Court in Criminal Case No. 76 of 2013 at Narok for the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*. After a full trial, he was convicted as charged and sentenced to life imprisonment. The applicant's application Misc Criminal No. 1 of 2017 seeking leave to appeal out of time was heard and dismissed on 15th November 2017 by the High Court. His application for leave was to file an appeal out of time was also dismissed on 13th August 2025 on the ground that it was a duplication of HCCRREV E135 of 2024. 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 7th November 2025 contends that he is illiterate and indigent and he depended on advice from other inmates and volunteer lawyers, some of whom misadvised him, leading to the multiple filings and withdrawals of his previous matters and therefore,



the delay in lodging this application was neither deliberate nor intended to obstruct justice, but occasioned by misadvice, ignorance and lack of understanding of the legal procedures.

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 order of the High Court refusing leave to appeal out of time is not appealable and as such this Court has no jurisdiction to entertain this instant application.
5. Section 361 (8) (b) of the Criminal Procedure Code which deals with second appeals stipulates as follows:

- “(8) This section shall not apply to—
- a. a decision of the High Court in its appellate Jurisdiction exercised under section 347(1)(b); or
 - b. a refusal by the High Court to admit an appeal out of time under section 349, and any such decision or refusal shall be final.”

6. In the circumstances, I’m unable to exercise my discretion under Rule 4 of this Court’s Rules in the applicant’s favour since the applicant’s application is a non-starter. Consequently, the application dated 6th November 2025 is dismissed. Orders accordingly.

DATED AND DELIVERED AT NAKURU THIS 12TH DAY OF FEBRUARY, 2026.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

