

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL DIVISION

CRIMINAL MISC. APPLN NO. E187 OF 2025

REPUBLIC APPLICANT

- VERSUS -

WALTER DICKENS AGINGU RESPONDENT

R U L I N G

1. This ruling determines the Motion dated **16/10/2025** in which the applicant seeks extension of time to file an appeal against the decision of the of Hon. M. Nyigei (PM) in **Kisumu Chief Magistrates Sexual Offences Case No. E002 of 2023** delivered on the **2/4/2025**.
2. The application was brought under section **349 of the Criminal Procedure Code** and is grounded on the grounds set out therein as well as the supporting affidavit of **Bernice D. Kagali**, Principal Prosecution Counsel.
3. The respondent was charged with the offence of rape contrary to **section 3 (1) (a) (b) (3) of the Sexual Offences Act No. 3 of 2006**. The particulars of the offence were that on the **21/1/2023** at Dandennis Super Highway Hotel Petrol Station along the Nairobi-Kisumu road in Kisumu East sub-county within Kisumu

County, the respondent intentionally and unlawfully caused his penis to penetrate the vagina of A.P.N without her consent.

4. On **2/4/2025**, the applicant was acquitted of the offence of rape contrary to ***section 3(1) (a) (b) (3) of the Sexual Offences Act.***
5. After 6 months, the applicant came to Court on **16/10/2025** applying for leave to file an appeal out of time. The applicant avers that they were informed of the trial court's decision on the **16/4/2025** and received a letter on the same on the **17/4/2025** by which time the period for lodging an appeal had lapsed. That a copy of the judgment was availed to them on the **19/5/2025** and due to the inexpediencies of work, a decision to lodge an appeal was made long after the duration for lodging an appeal had lapsed.
6. That the inordinate delay in lodging the appeal was on their part as advocates and the same ought not to be visited on the victim by denying her a chance to lodge the appeal. That the intended appeal has overwhelming chances of success.
7. As at the time of writing this ruling, the application was not opposed and neither of the parties herein have filed their submissions in support of their case.
8. It is trite law that the decision whether or not to extend the time for appeal is essentially discretionary. See **Said v Republic (Criminal Appeal E014 of 2023) [2025] KECA 1568 (KLR) (3 October 2025) (Judgment).**

9. Although there has been unreasonable and inordinate delay, the Court has considered the reasons advanced by the applicant for failure to file their appeal out of time. Unfortunately, due to the nature of how the applicant operates in terms of making the decision to charge and similarly whether to appeal or not, a process that is more times than often not made by a single individual or the Prosecuting Counsel in court, and which process this court takes judicial notice of, I find the reasons advanced by the applicant to be reasonable.
10. Further, as earlier stated, the application is not opposed. In any event, I see no prejudice to be suffered by the respondent if the application is allowed as he will have an opportunity to defend the appeal at the hearing.
11. In view thereof, I allow the application dated **16/10/2025**. The applicant is granted leave to file a Petition of Appeal within 30 days of today.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **12th** day of **February, 2026**.

A. MABEYA, FCI Arb

JUDGE