

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM: GACHOKA, J.A. - IN
CHAMBERS) CIVIL APPLICATION NO.
E001 OF 2026**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

VERSUS

SC.....RESPONDENT

AND

THE ATTORNEY GENERAL.....1ST INTERESTED

**PARTY COMMISSIONER GENERAL,
KENYA PRISON SERVICE.....2ND INTERESTED**

**PARTY MOI TEACHING AND
REFERRAL HOSPITAL.....3RD INTERESTED PARTY**

**AMKA AFRICA
JUSTICE INITIATIVE.....4TH INTERESTED PARTY**

**KENYA HUMAN RIGHTS
COMMISSION.....5TH INTERESTED
PARTY**

(An application for extension of time to appeal against the judgment and decree of the High Court at Eldoret (R. Nyakundi, J.) delivered on 12th August 2025

in

**HC Petition No. 15 of
2019)**

RULING

1. The Notice of Motion before me is dated 5th January 2026. It is

stated to be governed by Articles 157 and 159 of the Constitution and rule 4 of the Court of Appeal Rules 2022 seeking the following reliefs:

1. Spent;

2. THAT this Honourable Court be pleased to extend time for the Applicant file a Notice of Appeal against the Judgment of the High Court of Kenya at Eldoret (Hon. R. Nyakundi, J) delivered on 12th August 2025 in SC v. Director of Public Prosecutions & 5 others (Eldoret High Court Petition No. 15 of 2019) (hereinafter, the impugned judgment) in which the learned judge inter alia apportioned liability to the Applicant without any specific violation on the part of the Applicant.

3. THAT in the alternative, this Honourable Court be pleased to order that the Draft Notice of Appeal dated 5th January 2026 attached to the Supporting Affidavit hereto be deemed as having been filed within time.

4. THAT the Deputy Registrar of the High Court of Kenya at Eldoret be directed to accordingly lodge the said attached Draft Notice of Appeal to enable service thereon on the Respondent, and each of the Interested Parties.

2. The application is supported by the grounds on its face together with the supporting affidavit of Lucas Tanui, a Senior Assistant Director of Public Prosecutions, working under the employ of the applicant. The application is further hinged on the annexures attached to the affidavit. The facts giving rise to the application are that the applicant is dissatisfied with the findings of the trial court in Eldoret **HC Petition No. 15 of 2019** delivered on 12th August 2025. It intends to file its notice of appeal.

3. The applicant has beseeched this Court to extend time within which it may file and serve the said notice of appeal for the reason that the delay in filing it was due to the fact that counsel in conduct of the matter, sought specific instructions from its employer, on whether or not to proceed with the appeal as the arguments were founded on a novel issue of recognition and/or treatment of transgender people, and thus a matter of immense public interest. Withal, it was explained that the appeal raised arguable issues with high chances of success. Finally, it was in the interest of justice that the application be allowed as no prejudice would be met upon the respondent.
4. The applicant also filed written submissions and a case digest dated 3rd March 2026. In summary, it urged this Court to exercise discretion in its favor as the delay was explainable. The respondent and the interested parties have not filed submissions.
5. The discretionary power to file an appeal out of time is set out in Rule 4 of this Court's Rules. The governing principles were set out by this Court in the case of **Wasike vs. Swala** [1984] KLR 591 as follows:

“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending

scale of importance, the following factors:

- a) That there is merit in his appeal.**
- b) That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and**
- c) That the delay has not been inordinate.”**

6. I have considered the application and the grounds enunciated therein. The applicant has explained that the delay in filing the notice of appeal was not deliberate; it was occasioned by the need to establish whether an appeal was necessary on account of the novelty of the dispute. I also note that the application was filed about five months after the impugned judgment was delivered. I also note that appeal raises important points of law that are worthy of consideration.

7. Accordingly, the order I make in this matter is that the applicant shall file its notice of appeal within 14 days from the date of this order.

Dated and Delivered at Eldoret this 6th day of March, 2026.

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR