



REPUBLIC OF KENYA



KENYA LAW
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**Wekesa v Republic (Criminal Application E039 of 2024)
[2026] KECA 390 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KECA 390 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CRIMINAL APPLICATION E039 OF 2024**

JM MATIVO, JA

MARCH 5, 2026

BETWEEN

RODGERS WEKESA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file a notice of appeal against the judgment of the High Court of Kenya at Eldoret (H. Omondi, J.) dated 12th July 2018 in CRA No. 71 of 2015)

RULING

1. Rodgers Wekesa (the applicant), was tried, convicted and sentenced to life imprisonment at the Eldoret Chief Magistrates' Court in Criminal Case No. 4661 of 2013 at Eldoret for the offence of defilement contrary to section 8(1) and (2) of the *Sexual Offences Act*. His appeal to the High Court against both conviction and sentence being Eldoret High Court Criminal Appeal No. 71 of 2015 was dismissed by Omondi, J. (as she then was) on 12th July 2018. However, he failed to file his appeal within the statutory prescribed period. In his undated application the subject of this ruling, he seeks extension of time to file his appeal to this Court against conviction and sentence out of time. His key grounds in support of the application are:
 - (a) he was not supplied with the original trial court's records and its judgement to enable him to appeal on time;
 - (b) his appeal has high chances of success;
 - (b) the respondent will suffer no prejudice if the extension sought is granted.
2. The respondent in his submissions dated 3rd March 2026 concedes to the application urging this Court to find that the reason provided is plausible. To support the foregoing, the respondent relied on the reasoning *Kimanea vs. Republic* (Criminal Application E001 of 2025) [20251 KECA 354 (KLR).



3. For starters, an appellant in a criminal trial may be allowed to appeal out of time (extend time) if they can provide a valid, compelling reason for the delay (e.g., sickness, lack of legal representation, late receipt of proceedings and judgment) and demonstrate a reasonable chance of success on appeal. The Court exercises discretion to serve justice, balancing the delay against the need to correct potential miscarriages of justice, provided the delay is not unreasonable.
4. It is a requirement that an applicant demonstrates that the proposed appeal has a good chance of success, such as clear procedural errors, errors of fact or errors of law in the initial conviction. Shorter delays are more easily excused than long, unexplained delays. The Court is required to always bear in mind that opening the door for a party to appeal out of time is necessary to prevent a miscarriage of justice, particularly in cases involving severe penalties or wrongful convictions.
5. The Court's discretion to extend time for filing an appeal is not automatic; it is an equitable remedy that must be exercised judicially based on established legal principles rather than whims or caprice. Ultimately, the power to extend time is intended to ensure that justice is not denied due to technicalities, however, it is not a mechanism to encourage indolence or disregard for Court rules.
6. A party seeking such an extension bears the burden of proving that their case warrants the Court's intervention and also provide excusable reasons for the delay. I have considered the reasons offered in this case as highlighted earlier. I am persuaded that the reasons are plausible and justifiable. I am inclined to exercise my discretion in favour of the applicant. I allow the application and order that the notice of appeal and the memorandum of appeal filed herein shall be deemed to be properly filed. The applicant shall file the record of appeal within 45 days.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF MARCH, 2026.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

