



**Ndiema v Republic (Criminal Application E064 of 2025)
[2026] KECA 716 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KECA 716 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E064 OF 2025
HA OMONDI, JA
MARCH 31, 2026**

BETWEEN

KOECH NDIEMA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application seeking for leave for extension of time to file
and serve his record of appeal out of time from judgment of the High
Court of Kenya at Kisii (Okwany, J.) in HCCRA No. E038 of 2024)*

RULING

1. Koech Ndiema, the applicant, was charged at the Principal Magistrate's court at Keroka, and upon conclusion of the trial, he was convicted and sentenced to life imprisonment for the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act* No.3 of 2006. He appealed the decision of the trial court in Kisii HCCRA No E 038 of 2024, but the High Court upheld life sentence and the appeal dismissed. He explains that he got confused immediately when the life imprisonment was upheld, something that traumatized him.
2. The applicant was aggrieved by the outcome, and is desirous of contesting the decision by way of appeal before this Court, but the statutory time to appeal has long elapsed orders. This led to the applicant filing this Notice of Motion dated 18th December 2025 praying to be allowed to file his Notice of Appeal though out of time.
3. The applicant explains that the delay was not intentional and he had sent Notices of Appeal to the High Court in Nyamira, hoping the court would forward the notice to Kisumu Court of Appeal, but he did not have an advocate to make follow-ups in this case in order to help him file a Notice of appeal; that the delay was also marred by his family's poor financial background, making it difficult for them to



help him to follow up the matter in question. He further states that he could not he was not furnished with the High court judgement in time to enable him file his appeal on time.

4. He prays that this application be allowed for extension of time to enable him file Notice of Appeal though out of time. It is his contention that this appeal has overwhelming chances of success if only allowed heard and determined.
5. The respondent in conceding the application through written submissions filed by David Mwangi, the learned prosecution, acknowledges that there has been a period of about 2 years delay, which in his view is inordinate, but appreciates that the applicant is incarcerated, representing himself and that his Notice of Appeal was never delivered to court, and more importantly given the nature of the sentence being served, to wit, life imprisonment for conviction of defilement, predisposes him to a favourable consideration for extension of time.
6. Under Rule 61 (1) of this Court's Rules:

A person who desires to appeal to the Court shall give Notice of appeal in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

7. In this matter, the decision sought to be appealed was delivered in 2024, which is a period of about 2 years, and would therefore require a plausible explanation to warrant an extension. Clearly, the applicant ought to have filed the notice of appeal within 14 days of the delivery of the decision which he seeks to appeal, but that did not happen; nor has the applicant filed and served his record of appeal. This court is allowed to exercise its unfettered discretion as provided under rule 4 of the Court of Appeal Rules which provides as follows:

The court may, on such terms as it thinks just, by order 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, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

8. Some of the considerations in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. See the court in *Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees*, [2020] eKLR.
9. There is no maximum or minimum period of delay set out under the law, however, the reason or reasons for the delay must be reasonable and plausible. See for instance, *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR. In this instance the period of delay is two years; the appellant has given a host of challenges which made rendered it difficult for him to act timeously. Taking into consideration the nature of sentence he has been consigned to, I am persuaded that justice will be served by allowing him a chance to make his bid to freedom. I am satisfied that the reasons already alluded to posed a challenge to the applicant to act in a timely manner; and indeed, the sentence the applicant is challenging is a long one which if his prayer is denied will occasion him great prejudice.

The upshot is that the application is merited and is allowed. The applicant is granted extension of time to file and serve the notice of appeal out of time within fourteen (14) days of today's date. The applicant



shall file and serve the respondent with the record of appeal within thirty (30) days upon service of the Notice of Appeal.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF MARCH, 2026.

H. A. OMONDI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

