



**Abdi v Republic (Criminal Application E007 of 2026)  
[2026] KECA 815 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 815 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E007 OF 2026**

**JO OKELLO, JA  
APRIL 30, 2026**

**BETWEEN**

**JIMALE MOHAMUD ABDI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file an appeal out of time against the conviction and sentence of the High Court of Kenya at Garissa (J.N. Onyiego, J.) delivered on 25th June, 2025 in HC.CR.A. No. E046 of 2024)*

**RULING**

1. The application before this Court is dated 6<sup>th</sup> March, 2026. The main prayer is for leave to file appeal out of time against the judgment delivered on 25<sup>th</sup> June, 2025 in High Court Criminal Appeal No. E046 of 2024 at Garissa.
2. The applicant Jimale Mohamud Abdi charged with the offence of defilement contrary to section 8(1) as read together with section 8(3) of the [Sexual Offences Act, 2006](#).
3. The applicant's appeal to the High Court against conviction and sentence was dismissed. Although aggrieved, the applicant failed to lodge his notice of appeal within the statutory stipulated time of 14 days. His present application invokes Rule 4 of the Court of Appeal Rules, 2022 to enlarge the time he is allowed to file his appeal.
4. The matter came up for hearing by way of written submissions on 22<sup>nd</sup> April, 2026. However, there were no written submissions filed by both parties. There was proper service effected on 15<sup>th</sup> April, 2026.
5. The applicant's case is premised on the grounds stated on the face of the application and the supporting affidavit of the applicant herein. The respondent did not file any response to the application.



6. In the application and supporting affidavit therein, the applicant contends that he was unable to file the appeal within the statutory period due to the delay in the transmission by the court of the typed proceedings and the copy of the judgment. He further contends that the delay is not deliberate but occasioned by circumstances beyond his control. He has deposed the same grounds in his supporting affidavit.
7. He concludes his application by stating that the appeal raises arguable points of law and fact with high chances of success and that no prejudice will be occasioned to the respondent if the orders sought are granted.
8. The applicant has attached a draft notice of appeal and a memorandum of appeal.
9. The application is not opposed by the respondent.
10. Rule 4 of the Court of Appeal Rules provides:

“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.”
11. Under Rule 4 of the Court of Appeal Rules, 2022, an extension of time is a discretionary power grantable on well settled principles. In *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* [1991] eKLR, the Court set out the principles to include the length of the delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, and the conduct of the parties. The principles that guide this Court in determining whether to extend time pursuant to Rule 4 of the Rules of this Court were rehashed in *Mwangi vs Kenya Airways* (2003) KLR 486 at page 489 the Court stated thus:

“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under Rule 4. For instance, in *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997, the Court expressed itself thus: It is now well settled that the decision whether to extend the time is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”
12. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicant in the notice of motion dated 6<sup>th</sup> March 2026 should be granted. The applicant’s prayers are that the Honourable Court extend time and grant leave to allow the applicant to file appeal out of time against the judgment dated 25<sup>th</sup> June, 2025 in Garissa HCCRA No. E046 of 2024.
13. Having perused and considered the application, the supporting affidavit, and the record of appeal attached herein, the law, this Court is now called upon to determine whether the application meets the threshold for enlargement of time.



14. The first issue of consideration is the length of delay. From the records, the judgment in issue was delivered on 25<sup>th</sup> June, 2025, where upon the applicant had 14 days within which to file the notice of appeal i.e., 9<sup>th</sup> July 2025. In *Muya vs Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya*, Judge of the High Court of Kenya (Petition 4 of 2020) [2022] KESC 37 (KLR) was held that “where there is delay, the Court must interrogate whether the same is justifiable and thus excusable, or not. In order to do that, the Court must interrogate the circumstances of the case.”
15. Thus, the length of delay is considered on a case-by-case basis. Noting that the notice of appeal ought to have been filed on or before 9<sup>th</sup> July, 2025 and that the application for leave to file an appeal out of time has been filed 246 days after the said date, and further that taking into account the explanation and justification for the delay, I find that the delay is not inordinate considering that the applicant is already serving the sentence.
16. Therefore, having considered the application, the supporting affidavit and the law, Rule 61(1) of the Court of Appeal Rules, 2022 provides that a person who desires to appeal to the Court shall give notice 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. The judgment the subject of appeal was delivered on 25<sup>th</sup> June, 2025 while the instant application dated 6<sup>th</sup> March, 2026 was filed on 6<sup>th</sup> March, 2026 which is 246 days later, after the delivery of the High Court judgment.
17. On the reason for delay, the applicant, deposed in his supporting affidavit dated 6<sup>th</sup> March, 2026 that he was unable to file the appeal within the statutory period due to the delay in the transmission by the court of the typed proceedings and the copy of the judgment. He further contends that the delay is not deliberate but occasioned by circumstances beyond his control.
18. On whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the applicant. A quick perusal of the record of appeal attached herein, and noting that this is a second appeal, I’m persuaded that the appeal is not arguable.
19. Finally, on the degree of prejudice, the applicant is praying for leave to appeal against conviction and sentence on the offence of defilement contrary to Section 8(1) as read together with section 8(3) of the *Sexual Offences Act*, 2006. Litigation has to come to an end and resurrecting this matter is definitely prejudicial to the victim and the public at large.
20. In the circumstances, the applicant has not persuaded this Court that his application is deserving. This Court therefore, finds no merit in this application.
21. CONSEQUENTLY, and for the reasons stated, the application for leave to file appeal out of time is dismissed.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**DR. J. O. OKELLO**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR.**

