



**EOA v Republic (Criminal Application E051 of 2025)
[2026] KECA 761 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 761 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E051 OF 2025
HA OMONDI, JA
APRIL 24, 2026**

BETWEEN

EOA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave seeking extension of time to file an appeal out of time, arising from the decision of the High Court of Kenya at Kisii in HCCRA No. 68 of 2010)

RULING

- EOA, the applicant herein was charged and convicted for the offence of Incest contrary to section 20 (1) of the SOA No. 3 of 2006 vide Ndhiwa SO Case No. 17 of 2010 in the Senior Principal Magistrate’s court at Ndhiwa. He was sentenced to serve 20 years imprisonment. Aggrieved by the outcome, he filed his appeal to the High Court in Kisii HCCRA No. 68 of 2010 which was heard; appeal on conviction dismissed; and the sentence enhanced to life. Undeterred, he desired to pursue an appeal before this Court, but did not file his appeal within the required statutory period.
- He explains that the failure to lodge a timeous appeal arose from the fact that he was never provided with the High Court Appeal judgement to enable me prepare the Memorandum of Appeal within the stipulated period. The intention to appeal remains alive, leading to his filing this undated Notice of Motion seeking leave for extension of time to appeal. He laments that up to this moment, he has not been provided with the Documents alluded to, which he requires so as to file the appeal. He also states that had tried on numerous occasions to lodge an appeal to this Court without any success as he has never even been provided with an appeal number. He only got to realize later, that the Notice of Appeal was never received at the court registry. He therefore also prays to be provided with the records of the proceedings.



3. In response, while acknowledging that the power to extend time to file an appeal out of time is a discretionary one, which this Court may exercise upon being satisfied that there are reasons that warranted the delay and that the appeal is not frivolous, the respondent by a replying affidavit dated 5th February, 2026, sworn by learned Principal Prosecutor Victonelle Kitoto, concedes the application. This is on the basis that the applicant was sentenced to a long sentence of 20 years imprisonment; and the application is not frivolous.
4. Under Rule 4 of the *Court of Appeal Rules*, this Court is allowed to exercise its unfettered discretion 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.
5. Although the cited rule does not provide factors the court ought to consider in an application for extension of time past pronouncements by this Court have crafted appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. See for instance *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 which laid down the parameters to consider.
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. This means that 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. The applicant is incarcerated and genuinely believed that his requests for proceedings and judgment as well as the Notice of Appeal, had been received at the court registry. Certainly, his restricted liberty inhibited his ability to follow up on timely availability of record of appeal. In addition, I take note that he is serving a life sentence, and the possible prejudice he stands to suffer if he is not given a chance to have a final bite at the cherry on 2nd appeal cannot be gainsaid. Conversely, the respondent does not stand to suffer any prejudice.
8. 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. Consequently, this Court finds 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 Deputy Registrar is directed to ensure the applicant is served with a complete record of appeal within 30 days from the date of this decision. The applicant shall file and serve the respondent with the record of appeal within thirty (14) days upon service of the complete record.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

