



**Hussein v Republic (Criminal Application E005 of 2026)
[2026] KECA 802 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 802 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E005 OF 2026
LM NJUGUNA, JA
APRIL 24, 2026**

BETWEEN

MAHAT GARAT HUSSEIN APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to lodge an appeal from the judgment of the High Court of Kenya at Garissa (Ali-Aroni, J.) dated 3rd March 2022 in HCCRA No. E005 of 2021)

RULING

1. The application before me is dated 11th February 2026. The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. E005 of 2021.
2. The applicant, Mahat Garat Hussein, was first arraigned before the Senior Principal Magistrates' Court in Sexual Offences No. 09 of 2020 at Wajir and charged with the offence of defilement contrary to section 8 (1) (a) as read with section 8(3) of the *Sexual Offences Act* and an alternative charge of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*. The trial court convicted the applicant on the defilement charge and sentenced him to serve twenty (20) years' imprisonment on 3rd March 2021.
3. Dissatisfied with the trial court's judgment, the applicant appealed the conviction and sentence to the High Court in Criminal Case No. E005 of 2021 in Garissa, and upon hearing the matter, the High Court dismissed the appeal vide its judgment of 3rd March 2022.
4. The applicant was once again aggrieved by the High Court's decision, which prompted him to file an application for revision of his sentence vide Criminal Revision No. E041 of 2024. The application was rejected and dismissed by Onyiego, J. on 7th November 2024.



5. The applicant is now before this Court seeking leave to appeal the High Court’s decision given on 3rd March 2022 out of time. He contends that he was unable to appeal as he was transferred from Garissa prison to Kamiti maximum prison, where he fell ill and remained under medical care for a prolonged period of time. The applicant further contends that while at Kamiti, he lodged a notice of appeal about four (4) months out of time, but never received feedback about the same from the prison authorities. Following the dismissal of his application for revision of his sentence, he was further transferred to Meru prison, which made it difficult for him to follow up on the status of his notice of appeal. He attributes the delay to his incarceration, illness, prison transfers, and administrative challenges.
6. In his submissions dated 8th March 2026, the applicant invokes rule 4 of the Court of Appeal Rules to enlarge the time to file his appeal.
7. The respondent has not complied with the direction issued by the Deputy Registrar on 13th April 2026. Therefore, the application is not opposed.
8. I have considered the application, the supporting affidavit, and submissions. The principles that guide the Court in applications for extension of time are well settled. The Supreme Court of Kenya pronounced itself on the question of extension of time in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR, and stated as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.
9. In effect, although the court has unfettered discretion under rule 4 of the Court of Appeal Rules, that discretion should be exercised judicially, and each case must be considered on its own facts. In the present case, the High Court decision seeking to be challenged was delivered on 3rd March 2022. The present application was filed in February 2026, a delay of approximately 4 years. The applicant, however, maintains that he had filed a notice of appeal four months after the judgment of the High Court, but the same was misplaced within the registry. The reason given by the applicant for the delay in filing the appeal is plausible.
10. In applying the principles in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (supra), I am inclined to exercise my discretion in his favour.

Accordingly, I allow prayer (2) of the motion.

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

L. NJUGUNA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

