



REPUBLIC OF KENYA



KENYA LAW
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**Kotokoto v Republic (Criminal Application E002 of 2026)
[2026] KECA 837 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 837 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E002 OF 2026
PM GACHOKA, JA
APRIL 30, 2026**

BETWEEN

DAVID KIMUTAI KOTOKOTO APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of time against the judgment of the High Court of Kenya at Kitale (H. K. Chimitei, J.) delivered on 27th September 2018 in HCCRA No. 95 of 2017)

RULING

1. By Notice of Motion dated 23rd January 2026, the applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Kitale High Court in HCCRA No. 95 of 2017. The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act* in the Kitale Chief Magistrate's Court Criminal Case (SO) No. 188 of 2016. He was convicted and sentenced to life imprisonment. Thereafter, the applicant appealed before the Kitale High Court where his appeal was dismissed on conviction and sentence.
2. The applicant's Notice of Motion is supported by his undated supporting affidavit. He urged this Court to allow the application for the reason that he was not furnished with a response when he filed his notice of appeal earlier on. Furthermore, he was awaiting assistance from his relatives but all was in vain.
3. The respondent opposed the application. It filed written submissions dated 29th April 2026. The respondent supported the application for extension of time as the reasons advanced were explainable.



4. The Court in Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR held as follows regarding the powers donated under rule 4 of this Court’s rules, the provision the application is hinged upon:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.

5. I have considered the application, the respondent’s written submissions and the law. The applicant further stated that though he filed his notice of appeal, he did not receive a response. Since it was his appeal, it was incumbent on him to take the necessary steps and alert the prison authorities of his predicament. No evidence has been advanced to demonstrate any positive steps taken by the applicant.

6. Furthermore, he did not disclose when this notice of appeal was filed. In addition to the above, the judgment was delivered in 2018. The delay was extremely inordinate. For those reasons, I am not satisfied that the applicant ought to benefit from the exercise of discretion by this Court. His application is accordingly dismissed.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF APRIL, 2026.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

