

**IN THE COURT OF
APPEAL AT NYERI
CRIMINAL APPLICATION NO. E009 OF
2026 (CORAM: MUMBI NGUGI, JA)**

BETWEEN

**BRIAN KARIUKI MURUNGI.....APPLICANT
AND
REPUBLIC.....RESPONDENT**

(Being an application for extension of time to file a record of appeal out of time from the judgment of the High Court of Kenya at Kerugoya (Andayi W. F.J.) dated 16th September 2025

in
HCCR Appeal No. E005 OF 2025)

RULING

1. In the application dated 28th October 2026, the applicant seeks extension of time to lodge his appeal against the decision of the High Court at Kerugoya (Andayi W. Francis J.) dated 16th September 2025, and for the notice of appeal filed out of time to be deemed as duly filed. He also seeks orders that her be granted waiver of court fees on account of being a pauper.
2. The application is based on the grounds that the applicant is currently in prison custody and not able to raise court fees, and hence qualifies as a pauper; that his constitutional right of appeal is gravely threatened unless his application is allowed; and that his appeal has high

chances of success. He states that the delay in filing the appeal was due to the failure

to supply him with the lower court proceedings and judgment on time, and was neither deliberate nor intentional.

3. He sets out in the application the grounds on which he seeks to appeal, including, among others, that the High Court erred in law by enhancing his sentence from 15 to 20 years when the State had not lodged a cross-appeal.
4. In his affidavit sworn on 28th January 2026 in support of the application, the applicant avers that he was charged and convicted of the offence of defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act and sentenced to 15 years' imprisonment in Criminal Case No. E019 of 2023 at Wang'uru Law Courts by a judgment dated 22nd January 2025. That he appealed to the High Court in HCCR No. E005 of 2025 and in the judgment dated 16th September 2025, the High Court enhanced the sentence to 20 years. He reiterates that he was unable to file the appeal on time as he was not supplied with the lower court proceedings in good time to file his appeal
5. In submissions dated 3rd March 2026, the applicant asks the Court to exercise discretion and grant him the orders that he seeks.

6. The application is not opposed.

7. I have considered the application and the submissions by the applicant. Under rule 4 of the Rules of this Court, the Court has unfettered discretion to extend time to do any act prescribed under the Rules. The factors to be considered in exercising such discretion are the length of the delay; the reasons for the delay; (possibly) the chances of the appeal succeeding; and the prejudice to the respondent should the orders sought be granted- see **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi** (1999) 2 EA 231
8. In this case, the applicant wishes to appeal against a judgment rendered on 16th September 2025. He should have filed a notice of appeal within 14 days therefrom and, under rule 61(1) of the Rules of this Court, such notice institutes the appeal. The duty of preparing the record of appeal in a criminal appeal is placed by rule 64 of the Rules of this Court on the Deputy Registrar of the superior court. Thus, once a party files a notice of appeal, the responsibility to ensure that the record is prepared falls on the Deputy Registrar of the superior court, who is required to prepare the record of appeal and issue a certificate of delay in the event that the record of appeal is not prepared

within sixty days from the date the notice of appeal is filed.

9. I have perused the application, the affidavit in support, and the annexures thereto. I have not found a notice of appeal annexed to the application, so I am unable to issue orders to deem it as duly filed. However, I note that the applicant is unrepresented and I make due allowance for his failure to place the notice of appeal, if one was filed, before me.
10. Given the circumstances and noting the lengthy prison sentence that he faces, I hereby grant the applicant leave to file a notice of appeal out of time against the decision of Andayi J. dated 22nd September 2025. The notice shall be filed within 14 days of the date hereof, and in accordance with rule 61 of the Rules of this Court, shall institute the applicant's appeal against the aforesaid judgment.
11. Thereafter, the Deputy Registrar of the High Court in Kerugoya shall prepare the record of appeal in accordance with rule 64.
12. Orders accordingly.

Dated and Delivered at Nyeri this 24th day of April, 2026

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is

*a true copy of the
original*

Signed

DEPUTY REGISTRAR