



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okoyo v Republic (Criminal Application E044 of 2025)  
[2026] KECA 812 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 812 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E044 OF 2025**

**JO OKELLO, JA**

**APRIL 30, 2026**

**BETWEEN**

**WYCLIFFE ONGONGO OKOYO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file an appeal out of time against the conviction and sentence in of the High Court of Kenya at Nairobi (N. Ngenye, J.) delivered on 27th November, 2018 in HC.CR.A. No. 85 of 2016)*

**RULING**

1. By a Notice of Motion dated 13<sup>th</sup> June, 2025 the applicant, applied for leave to file the Notice and Memorandum of Appeal out of time against the judgment delivered on 27<sup>th</sup> November, 2018 in High Court Criminal Appeal No. 85 of 2016 at Nairobi.
2. The matter came up for hearing by way of written submissions on 20<sup>th</sup> April, 2026. However, there were no written submissions filed by both parties. There was proper service effected on 13<sup>th</sup> April, 2026.
3. 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.
4. In the application and the supporting affidavit therein, the applicant avers that he was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*, 2006 and was sentenced to life imprisonment. The applicant avers that he be allowed to file the appeal out of time that he has tried to appeal severally but no response. He has deposed the same grounds in his supporting affidavit. The applicant has attached the judgment from the High Court. The applicant is therefore seeking for extension of time on a second appeal.



5. He further deposed that since he had expressed his intention to appeal, he be granted leave to file his appeal out of time.
6. The application is not opposed by the respondent as there is no response on record.
7. 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.”
8. 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”.
9. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicants in the Notice of Motion 13<sup>th</sup> June, 2025 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 27<sup>th</sup> November, 2018 in Nairobi HCCRA No. 85 of 2016.
10. Having considered the application, the supporting affidavit, the law, this Court is now called upon to determine whether the application meets the threshold for enlargement of time.
11. The first issue of consideration is the length of delay. From the records, the judgment in issue was delivered on 27<sup>th</sup> November, 2018, where upon the applicant had 14 days within which to file the notice of appeal i.e., 12<sup>th</sup> December 2018. The applicant alleges he has been trying to appeal severally without success. The length of delay is considered on a case-by-case basis. 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.”
12. Noting that the notice of appeal ought to have been filed on or before 12<sup>th</sup> August, 2018 and that the application for leave to file an appeal out of time has been filed seven years after the said date, and further



that no satisfactory explanation and justification has been given, I find that the delay is inordinate and undeserving of this Court's discretion to extend the time.

13. 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 27<sup>th</sup> November, 2018 while the instant application is dated 13<sup>th</sup> June, 2025, which is seven years after the delivery of the High Court judgment. This Court cannot countenance the applicant's indolent.
14. On the reason for delay, the applicant, deposed in his supporting affidavit sworn and filed on 13<sup>th</sup> June, 2025 that the delay in filing an appeal was attributed to the fact that he has tried severally to lodge an appeal in vain. He has however not produced an iota of evidence to show these alleged attempts to lodge an appeal.
15. 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. This being a second appeal, this Court is restricted to matters of law. Be that as it may, I have not had the opportunity of perusing the grounds of appeal since there is no draft memorandum of appeal attached. However, considering the judgment of the superior court and I'm persuaded that this appeal is not arguable.
16. 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(2) of the [Sexual Offences Act](#), 2006. The offence was committed on 10<sup>th</sup> September, 2015, that is eleven years ago. Litigation has to come to an end and resurrecting this matter is definitely prejudicial to the victim and the public at large.
17. In the circumstances, the applicant has not persuaded this Court that his application is merited. This Court therefore, finds no merit in the Notice of Motion dated 13<sup>th</sup> June, 2025.
18. Consequently, for the reasons stated, the notice of motion dated 13<sup>th</sup> June, 2025 is dismissed.

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

**DR. J. O. OKELLO**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

