



**Samuel v Republic (Criminal Application E063 of 2025)
[2026] KECA 753 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 753 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E063 OF 2025
HA OMONDI, JA
APRIL 24, 2026**

BETWEEN

EVANS BOSIRE SAMUEL APPLICANT

AND

REPUBLIC RESPONDENT

(An application seeking leave to appeal out of time from the High Court of Kenya at Nyamira (Okwany, J.) in HCCRA No. E037 of 2023)

RULING

1. The applicant, Evans Bosire Samuel, was charged in MCSO No. E009 of 2023 at Keroka Principal Magistrate’s Court, for the offence of defilement contrary to 8(1) as read with section 8(2) of the *Sexual Offences Act*, and sentenced to serve life imprisonment. Aggrieved by that outcome he appealed to the High Court in Nyamira HCCRA No. E037 of 2023 (Okwany, J.), which saw the partial success of the appeal when the life sentence was substituted with that of 40 years. The finding on conviction was dismissed.
2. The applicant explains that upon realizing the implication of the High Court decision, he got confused and traumatized, to the extent that he did not take immediate steps to pursue an appeal, much as he so desired. He has now approached this Court by a Notice of Motion dated 23rd December 2025 for orders to allow him file his Notice of Appeal out of time. He clarifies that the delay was not intentional; and that he did not have an advocate to make follow-ups in this case to help him file a notice of appeal. Further, that the delay was also marred to poor family background who are unable to raise funds to engage an advocate.
3. By Notice of motion dated 23rd December 2025, the applicant seeks to be allowed for extension of time to enable him file a Notice of Appeal though out of time; and that this appeal has overwhelming chances of success if only allowed heard and determined.



4. In the written submissions, the applicant explains that upon dismissal of his appeal at the High Court, he filed a Notice of Appeal by way of e-mail to Nyamira High court to help him file it to the Court of Appeal but all in vain; that all the Notices of Appeal that were forwarded to High Court Nyamira for filing to Kisumu Court of Appeal were dismissed. Eventually, the prison administration was directed to have the notices of appeal uploaded on the CTS and his application was filed. Having been directed to give reasons to what led to his failure to file the appeal within the required time, he reiterates that after his conviction and sentence, his family members had promised to hire an advocate to pursue the appeal, but due to the poverty dominated background, they were unable to raise the money to hire an advocate; and by the time the appellant realized what was required, time had lapsed.
5. In this matter, the decision sought to be appealed was delivered in 2024; and the respondent points out that a period of about 2 years. Delay is outrightly inordinate as to require a plausible explanation to warrant an extension, but nonetheless, taking into account that the applicant is incarcerated, representing himself in person; and that his Notice of Appeal was never delivered to court, and more importantly given the nature of the sentence being served, to wit, imprisonment for conviction of defilement, then the respondent does oppose the application for extension of time.
6. As aptly pointed out by the applicant, this Court is allowed to exercise its unfettered discretion as provided under rule 4 of the Court of Appeal Rules which provides 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.
7. Although Rule 4 does not provide for 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.

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.
8. 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. I take into account the length of the delay involved which is about 2 years, the reason or reasons for the delay being an odd cluster of inhibitions involving his inability to follow up on timely availability of record of appeal, compounded by the fact of incarceration and having no legal representation, 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. Conversely, the respondent does not stand to suffer any prejudice.
9. 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 applicant shall file and serve the respondent with the record of appeal within thirty (30) days upon service of the Notice of Appeal.

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

