



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyambura v Republic (Criminal Application E215 of 2024)  
[2025] KECA 380 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 380 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E215 OF 2024  
MA WARSAME, JA  
FEBRUARY 28, 2025**

**BETWEEN**

**JOSEPH NJOROGE NYAMBURA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file a notice of appeal against the  
Judgment of the High Court at Nakuru (Mativo, J. in HCCRA No. 100 OF 2017))*

**RULING**

1. The applicant was charged and convicted with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* and sentenced to life imprisonment in Criminal Case No. 40 of 2017. Aggrieved, he filed an appeal in the High Court at Nakuru, where Mativo, J. (as he was then) upheld the conviction and commuted his sentence to 30 years.
2. The applicant has now filed the instant application (which is undated) seeking to file an appeal out of time against the High Court decision. The reason for delay as stated on the face of the application and the applicant's supporting affidavit is that the applicant had applied to the court of appeal through the High Court but since there was no E-filing system, he never received any feedback from the court.
3. The respondent, has opposed the application and submits that even though the sentence is lengthy, the reason for the delay is unsatisfactory.
4. I have carefully read and considered the application and the affidavit in support thereof. The principles applicable in an application for extension of time under rule 4 of the *Court of Appeal Rules* have been



the subject of many decisions of this Court. In *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR Ouko, J. (as he then was) stated as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its’ dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In considering the last principle, it must be borne in mind that it is not the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

5. It has not escaped notice that the date when the impugned judgment was delivered has not been disclosed in any part of the application. The length of the delay must be declared to enable the court to determine the plausibility of the explanation given. This court is therefore unable to discern whether the delay in filing a notice of appeal is eight years or less than one year. Again, no material has been placed before the court to demonstrate that the applicant made any attempts to follow up on his appeal. Consequently, in the face of such vague and unsubstantiated explanations, I find no merit in the application and dismiss the same.

**DATED AND DELIVERED AT NAKURU THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**M. WARSAME**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

