



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ng'eno v Republic (Criminal Application E010 of 2025)  
[2025] KECA 491 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 491 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E010 OF 2025  
PM GACHOKA, JA  
MARCH 7, 2025**

**BETWEEN**

**GILBERT KIPKURUI NG'ENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for leave to appeal out of time against the conviction and sentence of the High Court of Kenya at Kericho (Ongeri, J. delivered on 14th October 2022 in HCCRA No. 33 of 2019)*

**RULING**

1. Before me is the Notice of Motion dated 23<sup>rd</sup> January 2025. The applicant seeks leave of this Court to appeal out of time against the conviction and sentence of the Kericho High Court in HCCRA No 33 of 2019. The applicant was in Kericho CMC (SO) No 19 of 2017 charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. He was convicted of the offence and sentenced to life imprisonment on 31<sup>st</sup> October 2019. His first appeal before the High Court in Kericho HCCRA No 33 of 2019 was dismissed by Ongeri, J. on 14<sup>th</sup> October 2022.
2. The applicant is intent on appealing before this Court albeit out of time. His application is supported by his affidavit sworn on 14<sup>th</sup> January 2025. The applicant contended that he was not furnished with the proceedings and judgment in good time to enable him appeal out of time.
3. In its written submissions dated 19<sup>th</sup> February 2025, the state, through Senior Assistant Director of Public Prosecutions Mr. Omutelema, argued that though the delay in filing the appeal was inordinate and unexplainable, the sentence of life imprisonment was lengthy. In the circumstances, it did not oppose the application.



4. Under rule 4 of the *Court of Appeal Rules 2022*, this Court has discretion to extend time. In determining an application of this nature, this Court is alive to the factors taken into account namely the merit of the appeal, the prejudice, if any, to be suffered by the respondent and the period and length of delay. [See *Wasike v Swala* [1984] KLR 591].
5. I have considered the application, the grounds in support thereof, the period of delay, the respondent's submissions and the law. I am persuaded that the applicant has met the threshold for the exercise of this Court's discretion. Accordingly, the application is allowed. The applicant shall file his notice of appeal within 14 days from the date of this order. Thereafter, the record of appeal shall be filed and served within 45 days.

**DATED AND DELIVERED AT NAKURU THIS 7<sup>TH</sup> DAY OF MARCH 2025.**

**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**

