



**Njenga v Republic (Criminal Application E086 of 2025)
[2025] KECA 1937 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1937 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E086 OF 2025
PM GACHOKA, JA
NOVEMBER 19, 2025**

BETWEEN

DANIEL NJOROGE NJENGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Notice of Motion dated 15th October 2025 seeks the leave of this Court to appeal out of time from the conviction and sentence upheld by the High Court sitting in Nakuru in HCCRA No. 272 of 2011. The applicant was arraigned before the Nyahururu Principal Magistrate's Court to answer to the charges of defilement contrary to section 8 (1) as read with section 8 (2) of the *Sexual Offences Act*. He was convicted on his own plea of guilty and sentenced to imprisonment for life. Aggrieved by those findings, the applicant appealed. His appeal was unsuccessful as Wendoh, J. dismissed his appeal, upheld the conviction and affirmed the sentence on 26th April 2013.
2. The applicant wants to appeal against those findings hence the present application. It is supported by the grounds on the face of the application together with his affidavit sworn on 15th October 2025. He urged this Court to allow his application for the following reasons: he was not supplied with the judgment in good time; he did not have legal representation; prisoner authorities' administration lapses; and he had limited resources to secure his appeal. He urged this Court to invoke Articles 25 (c) and 159 (2) (d) of the *Constitution* as his appeal raised weighty and constitutional issues.
3. The application was canvassed by way of written submissions.

The applicant filed undated written submissions. He reiterated the contents of his application urging this Court to invoke Articles 2(6), 25 (c), 50 (2) (q), 48 and 159 (2) (d) of the *Constitution*, Article 14 (5) of the *International Convention on Civil and Political Rights* and Article 7 (1) (a) of the *African Charter on Human and People's Rights* in allowing his application. He further prayed that his



application be allowed as to deny it would occasion a miscarriage of justice for being denied an avenue to ventilate his appeal.

4. In the respondent's written submissions dated 10th November 2025, Senior Assistant Director of Public Prosecutions Mr. Omutelema, acting for the state, opposed the application. He observed that the delay of 12 years was inordinate and the explanation given was unsatisfactory. He urged this Court to dismiss the application.
5. Rule 4 of the *Court of Appeal Rules 2022* gives this Court discretionary powers to extend time. This Court in *Karny Zabrya & another vs. Shalom Levi* [2018] eKLR stated the following principles to be considered:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; 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 taking into account the last consideration, it must be born in mind that it is not the role of a 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”

6. I have considered the reasons supporting the application, the parties' written submissions and the law. It is not denied that the present application has been lodged more than 12 years after the impugned decision was delivered. In an attempt to explain the delay, the applicant stated that he lacked the requisite resources, legal representation, was not furnished with the judgment in good time and suffered prison authorities' administration lapses.
7. The reasons furnished however do not explain away why the applicant never took steps personally. What affirmative steps were taken by the applicant to excuse his delay? For example, did he lodge complaints about the administration of the prison authorities and what action or lack thereof was taken? Did he request for the judgment or was there any impediment that he faced? In addition, this Court finds that the absence of legal representation is no excuse as several litigants in Kenyan Courts represent themselves absent legal representation.
8. In my view, the applicant only threw reasons before me without justification. It is as if he was trying his luck at obtaining the orders sought. I do not think that his application is made in good faith and has any merit. I also find that the applicant is certainly not interested in pursuing an appeal. Accordingly, it is my finding that the Notice of Motion dated 15th October 2025 lacks merit. It is hereby dismissed.

DATED AND DELIVERED AT NAKURU THIS 19TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCI Arb.

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed



DEPUTY REGISTRAR

