



**Mwangi v Republic (Miscellaneous Criminal Application  
E013 of 2025) [2025] KEHC 10750 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10750 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E013 OF 2025**

**FN MUCHEMI, J**

**JULY 17, 2025**

**BETWEEN**

**FRANCIS GITHOGO MWANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief facts**

1. The application for determination dated 3<sup>rd</sup> February 2025 seeks for leave to file an appeal out of time.
2. The applicant states that he was convicted of the offence of robbery with violence contrary to Section 296(2) of the *Penal Code* and sentenced to death on 18 January 2023 in Gatundu CM Criminal Case No. 799 of 2019. The applicant states that he was unable to raise the required fee to file an appeal for he is a pauper.
3. In opposition to the application, the respondent filed Grounds of Opposition and submissions dated 12<sup>th</sup> June 2025 and states that the judgment against the applicant was delivered on 18<sup>th</sup> January 2023 yet the applicant has filed an application for extension on 3<sup>rd</sup> February 2025, which is two years and two months after the judgment.
4. The respondent argues that the applicant has not disclosed any good cause to warrant this court to allow the application. Further, the applicant has not accounted for or explained the delay in lodging an appeal against the trial court's decision.
5. The respondent states that the applicant has not annexed a petition for appeal would demonstrate that his intended appeal is devoid of any arguable issue.
6. The respondent argues that the extension of time is not a right of a party but is an equitable remedy that is only available to a deserving party at the discretion of the court. For party who seeks extension



of time has the burden of laying a basis to the satisfaction of the court, which the applicant has failed to do. The respondent argues that there are no sufficient reasons for the delay to warrant this court to exercise its discretion in favour of the applicant.

## The Law

### Whether the applicant has made out a case for the grant of an order for leave to file his appeal out of time

7. The court's power to extend time for filing an appeal is provided for under Section 349 of the [Criminal Procedure Code](#) as follows:-

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against.

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has lapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.

8. The Supreme Court in the case of [Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others](#) [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-by-case basis;
  - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
  - f. Whether the application has been brought without undue delay.
9. The applicant was charged and convicted of the offence of robbery with violence contrary to Section 295 as read with Section 296(2) of the [Penal Code](#) and was sentenced to death. Judgment was delivered on 11<sup>th</sup> January 2023 and sentence was meted on 18<sup>th</sup> January 2023. The applicant filed the instant application on 3<sup>rd</sup> February 2025. The applicant attributes the delay in filing his appeal to his inability to raise the required fees to file an appeal.
10. Notably, the applicant has not averred that he ever requested for judgment or the record of proceedings. Neither did he annex a copy of the request for certified copies of the proceedings and judgment.



Additionally, two (2) years have lapsed since conviction and the explanation provided for the delay is not satisfactory. Thus, the delay is inordinate and inexcusable in my view.

11. I have also considered the draft petition of appeal annexed to the application and noted that the intended appeal does not raise any arguable grounds without pre-empting the appeal, the intended appeal has diminished chances of success.
12. Accordingly, the applicant has not provided sufficient reasons for delay to justify exercise of this courts discretion in his favour. Thus, the application dated 3<sup>rd</sup> February 2025 lacks merit and is hereby dismissed.
13. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 17<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI**

**JUDGE**

