



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthike v Republic (Criminal Application E045 of 2025)  
[2025] KECA 1502 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1502 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E045 OF 2025  
JM NGUGI, JA  
SEPTEMBER 19, 2025**

**BETWEEN**

**JULIUS NDAMBERI MUTHIKE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for leave to appeal out of time against the Judgment of the High Court of Kenya at Kerugoya, (Ng'arng'ar, J.) dated 28th May, 2025 in HCCRA No. E010 of 2022)*

**RULING**

1. Before me is a Notice of Motion brought under Rule 4 of the Court of Appeal Rules, 2022 in which the Applicant, Julius Ndamberi Muthike, who is currently incarcerated, seeks leave to file a notice of appeal out of time against the judgment of the High Court at Kerugoya (Ng'arng'ar, J.) delivered on 28th May, 2025 in HCCRA No. E010 of 2022.
2. The Applicant was convicted of the offence of robbery with violence in Gichugu Criminal Case No. E183 of 2020 and sentenced to death. His appeal to the High Court was dismissed, hence this application.
3. The grounds advanced are that the Applicant is in prison custody, unable to pay legal fees, and was not supplied with the lower court proceedings and judgment within time. He urges that the omission was not deliberate. He asserts that his intended appeal is arguable, and that denial of this application would infringe his constitutional right of appeal.
4. The Respondent does not oppose the application.



5. Rule 4 of the Court of Appeal Rules, 2022 provides:

“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.”

6. The principles guiding the exercise of this discretion were set out in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are, first the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

7. I have considered the application. The Applicant is a convicted person facing the ultimate penalty of death. He has explained that the delay was occasioned by the fact that he was not supplied with proceedings and judgment within time. His position as an incarcerated and indigent litigant is also relevant in appreciating the difficulties encountered.

8. The application is not opposed by the State. No prejudice has been demonstrated that would be suffered if extension is granted. On the other hand, to deny the application would unjustly deprive the Applicant of the opportunity to pursue an appeal in the highest criminal jurisdiction, which is guaranteed by the *Constitution*.

9. In the circumstances, I allow the application. The time for lodging the notice of appeal is hereby extended.

10. The Applicant shall lodge the notice of appeal within fourteen (14) days of this ruling.

11. Orders accordingly.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

