



**Republic v Mwangi (Criminal Application E018 of 2025)
[2025] KECA 1511 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1511 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E018 OF 2025
JM NGUGI, JA
SEPTEMBER 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

STANLEY NJOROGE MWANGI RESPONDENT

*(Being an Application for leave to appeal out of time against the Judgment
of the High Court of Kenya at Nyeri, (Kizito, J.) dated 27th June, 2024)*

RULING

1. This is an application by the Republic of Kenya, through the Director of Public Prosecutions (“the Applicant”), seeking leave to appeal out of time against the judgment of the High Court of Kenya at Nyeri, delivered by Hon. Justice Magare D. Kizito on 27th June 2024 in HCCRA No. E065 of 2023, which acquitted the Respondent, Stanley Njoroge Mwangi.
2. The application is brought under Rule 4 of the Court of Appeal Rules, 2022, which provides:

“Rule 4 – Extension of time. The Court of Appeal may, upon good cause shown, extend or abridge any period prescribed by these Rules, or by any order of the Court, notwithstanding that the period has expired, and may make such orders as to costs and the manner of taking any steps as it thinks fit.”
3. The application is supported by an affidavit sworn by Mr. Solomon Naulikha, Senior Assistant Public Prosecutor at the ODPP, Nyeri. The Respondent was duly served with the application and hearing notice but did not file any reply. The application is, therefore, treated as unopposed.
4. The Applicant avers, inter alia, that:
 - a. The intended appeal has overwhelming chances of success;



- b. The delay in filing the appeal is not inordinate and was occasioned by a delay in the supply of the typed High Court judgment and proceedings;
 - c. Granting leave to appeal serves the interests of justice; and,
 - d. The Respondent is unlikely to suffer any prejudice.
5. The application was filed promptly on 30th January 2025, approximately seven months after delivery of the High Court judgment.
 6. The Applicant argues that the intended appeal raises arguable grounds because the High Court, while acquitting the Respondent, misdirected itself on the application of Section 322 of the Penal Code relating to handling of stolen property.
 7. Further, the High Court appears to have overlooked or undervalued key evidence presented by the prosecution, particularly concerning the chain of possession and identification of items allegedly handled by the Respondent.
 8. In addition, the Applicant contends that the High Court erred in law by focusing excessively on procedural technicalities and by failing to give due weight to the presumption of ownership and the rights of victims under *the Constitution* and the Victims Protection Act, thereby raising substantive issues suitable for appellate consideration.
 9. The principles guiding applications for extension of time are well settled. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 this Court stated:

“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.”
 10. The delay in this matter was primarily due to the late supply of the High Court judgment and supporting documents to the Applicant, which constitutes a legitimate cause beyond the control of the Applicant. The application was filed promptly thereafter. There is no evidence suggesting any mala fides or deliberate delay on the part of the Applicant.
 11. Further, the intended appeal seeks to challenge the acquittal of the Respondent, and the grounds advanced indicate a prima facie arguable case on appeal. The Respondent has not filed any opposing affidavit or submissions to contest the application, which reinforces the position that the application is unopposed and the grant of leave would not prejudice the Respondent.
 12. In light of the foregoing, and having considered the principles laid down in Rule 4 of the Court of Appeal Rules, 2022 and the principles in the *Leo Sila Mutiso Case* (supra), the Court finds that:
 - a. The delay to file the intended appeal is not inordinate;
 - b. There is good cause to grant extension of time;
 - c. The intended appeal has a reasonable prospect of success; and
 - d. Granting leave serves the interests of justice.



13. Accordingly, the application dated 30th January, 2025 is allowed. The Applicant, the Republic, through the Director of Public Prosecutions, is granted leave to appeal out of time to the Court of Appeal against the judgment of the High Court of Kenya at Nyeri, delivered by Hon. Justice Magare D. Kizito on 27th June 2024 in HCCRA No. E065 of 2023. The same shall be filed and served within thirty (30) days of the date of this ruling.

14. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025.

JOEL NGUGI

..... **JUDGE OF APPEAL**

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

Signed

Deputy Registrar

