



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Muigai (Criminal Application E019 of 2025)  
[2025] KECA 1493 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1493 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E019 OF 2025  
JM NGUGI, JA  
SEPTEMBER 19, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DAVID CHEGE MUIGAI ..... RESPONDENT**

*(Being an Application for leave to appeal out of time against the Order of review of the High Court of Kenya at Nyeri, (Kizito, J.) dated 12th July, 2024 in HCCR. Review No. E204 of 2024)*

**RULING**

1. This is a ruling on an application brought by the Director of Public Prosecutions (“the Applicant”) seeking leave to appeal out of time under Rule 4 of the Court of Appeal Rules, 2022. The application is dated 10<sup>th</sup> February, 2025 and arises from the decision of the High Court at Nyeri (Kizito, J.) in Criminal Revision Case No. E204 of 2024 delivered on 12<sup>th</sup> July, 2024.
2. The application was supported by an affidavit sworn by Mr. Solomon Naulikia, Senior Assistant Director of Public Prosecutions, setting out the reasons for the delay, including the delay in supply of the typed High Court proceedings and the review order. The intended appeal, according to the Applicant, has overwhelming chances of success, will serve the interests of justice, and the Respondent is unlikely to suffer any prejudice.
3. The application was duly served on the Respondent, who did not file any replying affidavit or submissions in opposition. Consequently, the application is treated as unopposed.



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

“Where the period prescribed by these Rules or by any order of the Court within which any step is to be taken has expired, the Court may, on good cause shown, extend the time for taking that step, notwithstanding that the time for doing so has expired.”

5. The law is settled that an application for extension of time is that the delay is not inordinate; and (ii) that it has been sufficiently explained. In this regard, I am guided by the decision in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, where the Court held that an extension of time should be granted if the applicant demonstrates sufficient cause and the delay is not inordinate.

6. The principles guiding the exercise of this discretion were further set out in *Leo Sila Mutiso Case* in the following terms:

“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. In the present case, the delay is not inordinate. The decision was made on 12<sup>th</sup> July, 2024 while the present application was filed on 10<sup>th</sup> February, 2025. The Applicant has explained that the proceedings of the High Court were not ready promptly, which caused the delay in filing the intended appeal. The affidavit has satisfactorily explained this delay as being beyond the control of the Applicant and not deliberate.

8. Further, the intended appeal raises arguable points of law. It is apparent from the draft Memorandum of Appeal and the supporting affidavit that there is an arguable point whether the High Court erred in revising the Respondent’s sentence; and whether the revision was contrary to established sentencing principles and policy guidelines. The appeal is, thus, eminently arguable.

9. In the circumstances, and having considered the application, affidavit, and the relevant law, I am satisfied that good cause has been shown for the extension of time sought by the Applicant.

10. Accordingly, the application is allowed. The Applicant is granted leave to file the intended appeal out of time within 30 days from the date 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**

