



REPUBLIC OF KENYA



KENYA LAW
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**Kinyati v Republic (Criminal Application E037 of 2025)
[2025] KECA 1558 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1558 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E037 OF 2025**

A ALI-ARONI, JA

OCTOBER 1, 2025

BETWEEN

SAMUEL MWANGI KINYATI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to an appeal out of time from the Judgment of the High Court at Nanyuki (Kasango, J.) dated 17th November, 2017 in HCCRA No. 48 of 2015)

RULING

1. Before the court is a notice of motion dated 23rd April 2025, by the applicant, Samuel Mwangi Kinyati, said to be brought under rules 31 and 42 of the [Court of Appeal Rules](#), although seeking leave to file an appeal out of time. The relevant rule being rule 4 of the [rules](#).
2. The application is based on grounds on the face of the application and the applicant's undated affidavit wherein he states that he was convicted of the offence of defilement and sentenced to life imprisonment in Criminal Case No. 1266 of 2012; he appealed to the High Court in HCCRA No. 48 of 2015, but his appeal was dismissed; while being held at Nanyuki Prison, he prepared the notice of appeal and memorandum of appeal to this Court and the staff at the said facility promise to forward the same to the court; he was immediately thereafter transferred to Nyeri Maximum Prison; that the dismissal of his appeal in the High Court caused him a prolonged state of confusion for the past six (6) years; he was unaware of the status of his notice of appeal and memorandum of appeal; his intended appeal has a strong chance of success, as it raises arguable points of law, the delay in filing the appeal was not intentional and, therefore, should not be considered inordinate given the unforeseen circumstances he faced during the transition between Nanyuki and Nyeri Prisons; he has undergone treatment and counselling; and after a period of reflection he has made the decision to appeal out of time. In support of the application, he relied on [Andrew Kiplagat Chemango vs. Paul Kipkorir Kibet](#) [2018] eKLR to support the proposition that the law does not specify a minimum or maximum period for delay; and



that one is required to give a plausible explanation for the delay for the court to exercise its discretionary powers favorably.

3. Having considered the application and the affidavit in support, the only issue for determination is whether the applicant is deserving of the orders sought. Rule 4 of the Court of Appeal Rules governing extension of time gives the court the discretion to extend the time limited by the rules for doing any act authorised or required by the rules.
4. The State has not opposed the application. The issue of the exercise of the court's discretion in extending time has travelled a well-beaten path. (See Fakir Mohammed vs. Joseph Mugambi & 2 Others [2005] eKLR (Civil Application No. Nai. 332 of 2004 (Nyr. 32/04)). The Supreme Court pronounced itself on the issue of extension of time in several cases, including County Executive of Kisumu vs. County Government of Kisumu & 8 Others (Civil Application 3 of 2016) [2017] KESC 16 (KLR), where it stated as follows; -

“It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicholas Salat case to which all the parties herein have relied upon. The Court delineated the following as:

the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
 5. In Ngige vs. Republic (Criminal Application E013 of 2024) [2024] KECA 848 (KLR), where the court found there was administrative delay, thus delaying the filing of an appeal, this Court held as follows; -

“The application is unopposed. Rule 4 of the Court of Appeal Rules governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorized or required by the Rules. I have considered the application and find the delay explained as having been caused by slow administrative action to supply the proceedings of the superior court in time for the filing of the appeal before expiry of the time limited to do so. In the premises, I find merit in this application.”



- 6. The applicant has explained himself, and one cannot fail to appreciate the administrative complexities and difficulties in communication in the prison facilities. It is also not far-fetched that the applicant underwent trauma after his first appeal was dismissed. These are all plausible reasons that have been explained to the satisfaction of the court.
- 7. In the circumstances, I allow the application. The applicant is to file his memorandum of appeal within the next 30 days of today's date.

DATED AND DELIVERED AT NYERI THIS 1ST DAY OF OCTOBER, 2025.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

