



REPUBLIC OF KENYA



KENYA LAW
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**Mukuha v Republic (Criminal Application E053 of 2025)
[2025] KECA 1749 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1749 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E053 OF 2025
S OLE KANTAI, JA
OCTOBER 24, 2025**

BETWEEN

JOHN GATHAMBO MUKUHA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an Appeal from the Judgment of the High Court at Kerugoya (L. Njuguna, J.) dated 29th September, 2023 in H.C. CRA No. 52 of 2017 Consolidated with CRA Nos. 54, 55, 56 of 2017.)

RULING

1. The applicant, John Gathambo Mukuha has approached the Court by Motion under rule 4 of the Court of Appeal Rules praying that time to lodge an appeal be extended and notice of appeal “...to be filed out of time be deemed as properly filed with leave of the court”; that he be granted waiver of fees as he is a pauper. He says in ground in support of the Motion and in his supporting affidavit that he is in prison custody and unable to pay fees “...therefore a pauper”; that his constitutional rights to appeal will be threatened if the application is not granted; that his intended appeal has high chances of success; that failure to file an appeal on time was occasioned by the fact that he was not supplied with records of the lower court on time to appeal; he thinks that the Judge on first appeal erred by upholding his conviction and sentence. He asks to be supplied with original trial court’s records to enable him prepare Memorandum of Appeal. He was charged, convicted for the offence of robbery with violence, he was sentenced to death and his appeal to the High Court of Kenya at Kerugoya was dismissed.
2. I have seen written submissions by both sides and I have particularly noted that the respondent does not oppose the application.



3. The power donated by rule 4 of the rules is discretionary and the principles that apply in an application for extension of time were set out in the oft-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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.”

4. The applicant does not tell me when his appeal to the High Court was dismissed. He however says that he is a convict; that he was not supplied with proceedings and judgment to enable him appeal. Indeed even in the application he is asking to be supplied with proceedings and judgment to enable him draw Memorandum of Appeal. I note that the applicant is unrepresented and may not have necessary efficient facilities or structures in prison to be able to abide the timeliness required by our rules. I think that it is a suitable application where I should exercise my discretion in favour of the applicant.
5. I allow the Motion. Let notice of appeal be filed within fourteen (14) days of today and record of appeal within twenty one (21) days thereafter. The Court Registry to supply the applicant with proceedings and judgment of the lower courts. I waive Court fees as the applicant tells me that is a pauper.

DATED AND DELIVERED AT NYERI THIS 24TH DAY OF OCTOBER, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

