



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Application E067 of 2025)
[2025] KECA 1901 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1901 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E067 OF 2025
JM MATIVO, JA
NOVEMBER 12, 2025**

BETWEEN

PETER NDUNG’U MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the sentence of the High Court of Kenya at Nyahururu (C. Kariuki, J.) dated 26th October, 2021 in CRA No. 2 of 2018)

RULING

1. The applicant, (Peter Ndung’u Mwangi) was charged before the Chief Magistrate’s Court at Nyahururu in Criminal Case No. 3174 of 2015 with the offence of Robbery with violence contrary to Section 296 (2) of the Penal Code. Upon conviction, he was sentenced to death. His appeal to the High Court at Nyahururu being CRA No. 2 of 2018 was dismissed on 26th October 2021. Although aggrieved, he did not lodge his notice of appeal within the statutory-stipulated period of 14 days. By an application dated 8th July 2025, he prays for extension of time to appeal to this Court against the said judgment on grounds that he was not supplied with the High Court’s records/proceedings and judgment. Thus, the delay is not intentional.
2. In response to the application vide written submissions dated 3rd November 2025, Mr. Omutelema Senior Assistant Director of Public Prosecution has amiably conceded to the leave application pointing to death sentence meted upon the applicant.
3. Rule 4 of the Court of Appeal Rules gives the Court unfettered discretion to extend the time limited by the 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 on such terms as it thinks



just. The Supreme Court in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, the Court ruled that

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

4. I have considered the reasons advanced by the applicant as set out in the motion and the supporting affidavit. Although the application is not opposed, the applicant must still satisfy the principles that have been laid down in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [supra]. There is no clear evidence that the applicant was not furnished with court proceedings as claimed because he did not attach a letter to the registry requesting for the proceedings. However, the order sought is discretionary. The discretion conferred to a court is to be exercised in conformity with the spirit of the law and in a manner to subserve rather than to defeat substantial justice. It should be guided by law and inspired by a desire to promote justice. It should not be arbitrary, vague and fanciful and should not be ruled or governed by humour, unthinking folly or rash injustice. It must be exercised in accordance with legal principles and not in an arbitrary or capricious manner. I note that the applicant is serving a death sentence. It is only just and fair in the circumstances that I allow him to exercise his second and probably his last appeal in our judicial hierarchy. Accordingly, the application dated 8th July 2025 is hereby allowed. The applicant shall file his appeal within 45 days from the date of this ruling.

DATED AND DELIVERED AT NAKURU THIS 12TH DAY OF NOVEMBER 2025

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

