



**Mtigo v Republic (Criminal Appeal E104 of 2025)
[2025] KEHC 17649 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17649 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPEAL E104 OF 2025
WM KAGENDO., J
NOVEMBER 27, 2025**

BETWEEN

BONFACE NGETI MTIGO APPELLANT

AND

THE REPUBLIC RESPONDENT

RULING

A. Antecedent Facts

1. The Appellant/Applicant filed the present Application under a Certificate of Urgency seeking the following orders:
 1. Spent.
 2. That pending the hearing and determination of this Application or until further orders, this Honourable Court be pleased to admit the Appellant to reasonable bail or bond terms pending the hearing and determination of the Appeal.
 3. That this Honourable Court be pleased to extend time within which the Appellant ought to have filed the Petition of Appeal against the conviction and sentence in Criminal Case No. SO E082 of 2021 delivered on 3rd September 2025 by Hon. G.A. Ollimo.
 4. That upon grant of leave, this Honourable Court be pleased to deem the annexed Petition of Appeal as having been duly filed and served within the extended time.
 5. That this Honourable Court be pleased to give such other or further orders as it may deem fit and just.
 6. That the costs of this Application do abide the outcome of the Appeal.
2. The Application was directed on 28th October 2025 to be canvassed by way of written submissions.



A. Issues For Determination

3. From the Application and the prevailing factual matrix, the following issues arise for determination:
 - a. Whether this Honourable Court should extend time for the Appellant/Applicant to file his Appeal; and
 - b. Whether the Appellant/Applicant should be admitted to reasonable bail or bond terms pending Appeal.

C. Analysis

Whether this Court should extend time to file the Appeal

4. It is trite that a party dissatisfied with a judgment must lodge an appeal within fourteen (14) days. However, delays may occur due to circumstances beyond the party's control. Courts have consistently exercised equitable discretion to intervene where a party demonstrates a bona fide intention to appeal but is hindered by circumstances not of their own making.
See *Salat v IEBC & 7 Others* [2014] KESC 12 (KLR).
5. The discretion of this Court to extend time is anchored in the proviso to Section 349 of the Criminal Procedure Code, which provides that an appeal filed out of time may be admitted for good cause.
6. The Supreme Court in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR emphasized that delay must be explained satisfactorily.
7. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* (2014) outlined the guiding principles for extension of time, including reasonable cause for delay, absence of prejudice, and prompt filing once the delay is discovered.
8. Applying these principles, the Court must determine whether the delay herein is excusable.
 - 9–11. The Appellant/Applicant has explained that he instructed his previous advocate to lodge an appeal immediately after judgment, only to later discover that no appeal had been filed. This prompted him to engage new counsel who promptly filed the present Application and Petition of Appeal.
 - 12–14. The delay of 22 days is not inordinate. Courts have allowed extensions after far longer periods, including 2 years (*Mohamed v Republic* [2025] KECA 927) and over 6 years (*Hatiba v Republic* [2025] KECA 391). The explanation provided is therefore reasonable and plausible.
Whether the Appellant/Applicant should be admitted to bail pending Appeal
 - 15–18. Bail pending appeal is discretionary and is guided by the principles stated in *Jivraj Shah v R* (1986) KLR 605 and *Mwaura v R* (1986) KLR 600. The key considerations are:
Exceptional or unusual circumstances;
Whether the appeal has overwhelming chances of success; Character of the appellant;
Whether a substantial part of the sentence will have been served before the appeal is heard.
9. The Appellant/Applicant complied with all bond terms during trial.
 - 20–23. The Appellant/Applicant relies on the grounds in his draft Petition of Appeal and contends the appeal has overwhelming chances of success.



24–25. In Charles Owanga Aluoch v DPP [2015] KEHC 5903, the Court granted bail pending appeal where substantial points of law were raised, and the appellant had complied with trial bond terms.

Determination

10. The Respondent did not file any response.
11. I have considered the Application. It was filed timeously, and the delay in filing the appeal has been satisfactorily explained. I accordingly allow the prayer for extension of time, and the Petition of Appeal already filed is deemed properly on record.
12. On the prayer for bond pending appeal, I have considered the Petition and the grounds raised. Without delving into the merits of the Appeal at this stage, I find that no overwhelming reason or exceptional circumstance has been demonstrated to warrant the grant of bond pending appeal. The presumption of innocence no longer applies at this stage. Furthermore, the sentence was only recently passed, and the Appellant/Applicant has not served a substantial portion of it.
13. Accordingly, the prayer for bond pending appeal is declined. The Court shall expedite the preparation of the record of appeal.
14. The file shall be mentioned before the Deputy Registrar for directions on 16/12/25
Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 27TH DAY OF NOVEMBER 2025**

HON. LADY JUSTICE W. K. MICHENI JUDGE

In the presence of: -

Mr Kilumo For The Applicant

Mr Sirima For The Respondent

Bebora Court Assistant

