



**Muchai v Republic (Miscellaneous Criminal Application E046 of 2025)  
[2025] KEHC 17918 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17918 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E046 OF 2025**

**TW OUYA, J**

**NOVEMBER 27, 2025**

**BETWEEN**

**EDWIN GICHUHI MUCHAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an application dated 25<sup>th</sup> June 2025, the applicant moved this honourable court seeking to file an appeal out of time against the judgment delivered in Thika CM. SO. No. E008 of 2020 Republic versus Edwin Gichuhi Muchai.
2. The application was supported by grounds on the face of it as well as the affidavit of Edwin Gichuhi Muchai of even date where it was deponed that the record of appeal was supplied late and therefore the applicant was unable to lodge his appeal within the prescribed time. It was further deponed that the intended appeal raises triable issues with an overwhelming chance of success. The applicant also urged the court to exercise its inherent powers to grant the applicant leave to appeal out of time.
3. The Respondent did not oppose the application.
4. I have considered the application, the supporting affidavit and the oral submissions by the parties.
5. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR, and stated 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.”



6. The principles on matters of judicial discretion were laid down in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (supra) and the same were also espoused in Bowen, L. J., in Gardner vs. Jay [1885] 29 CH D 50

“that discretion, like other judicial discretion, must be exercised according to common sense and according to justice” and on a case-by-case basis. I do not think that it is wise to attempt to lay down inflexible rules. This court is therefore alive to the fact that for the purposes of exercising discretion conferred on this Court, it would be difficult, and inexpedient, to lay down any inflexible rules which should govern the same. The court is therefore called upon to apply the rule of law and to examine the circumstances of each case in order to determine whether factual certainty requires some amelioration of legality and, if so, to what extent.

7. Appreciating the concession by the prosecution, and taking into account the need for a court of law to allow a party to have his day in court, I am inclined to exercise my discretion in the applicant’s favour.
8. Consequently, the application dated 25<sup>th</sup> June 2025 is hereby allowed. The applicant shall file his notice of appeal within 14 days from today and thereafter file his record of appeal within 30 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. T. W. Ouya**

**JUDGE**

For Applicant....Edwin Gichuhi Muchai Present at Kamiti Max

For Respondent.....Kagama HB Torosi for state

Court Assistant.....brian

