



REPUBLIC OF KENYA



KENYA LAW
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**Kabui v Republic (Criminal Application E065 of 2025)
[2026] KECA 37 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 37 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E065 OF 2025
A ALI-ARONI, JA
JANUARY 23, 2026**

BETWEEN

EVANS MUTITU KABUI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the decision of the High Court at Nyeri (M. Kizito, J.) delivered on 20th May, 2025 in HCCRA No. E072 of 2024)

RULING

1. Before the Court is an application by way of an undated notice of motion brought under rules 31 and 42 of the Court of Appeal Rules 2022 ('the Rules'), seeking leave to appeal out of time.
2. The application is based on the grounds outlined in the supporting affidavit of the applicant, wherein he states that he was convicted and sentenced to 20 years of imprisonment for the offense of grievous harm. He appealed to the High Court at Nyeri in High Court Criminal Appeal No. E072 of 2024, and his appeal was dismissed by Hon. M. Kizito (J) on 20th May 2025.
3. His relatives promised to engage a counsel to represent his intended appeal to this Court, but later informed him that they were unable to secure the necessary funds to engage one. For this reason, the applicant seeks leave to appeal out of time in the interest of justice, as he believes his appeal has a high chance of success if it is heard and determined.
4. The applicant has not filed submissions.
5. In submissions dated 15th January 2026 the respondent does not oppose the application.
6. I have considered the application, the affidavit in support and the respondent's submissions. The issue for determination is whether to grant the applicant leave to appeal out of time.



7. Rule 4 of the Rules govern the extension of time. The rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules. It states as follows:

The Court may, on such terms as may be just, by order, extend the time limited by these 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, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

8. In *Boniface Emuria Loro vs. Republic* [2003] KECA 91 (KLR), this Court was faced with an application for leave to file appeal out of time and the main reason for the delay in filing the appeal within the prescribed period was that the applicant was not supplied with a copy of the judgment in time. The application was allowed.

9. Similarly, I find the explanation given by the applicant to be plausible, and since the respondent has no objection, I allow the application. The memorandum of appeal and the record of appeal be filed within the next 30 (thirty) days of the date of this ruling.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF JANUARY, 2026.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

