



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwita v Republic (Criminal Application E049 of 2024)  
[2026] KECA 157 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 157 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E049 OF 2024  
HA OMONDI, JA  
JANUARY 30, 2026**

**BETWEEN**

**PETER MUCHUMBE MWITA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application against the judgment of the High Court of Kenya at Migori (Mrima, J.) dated 21st September 2016 in HCCRC No. 21 of 2018)*

**RULING**

1. Peter Muchumbe Mwita, the applicant herein was charged for the offence of murder contrary to section 203 s read with section 204 of the Penal, to which he was convicted and sentenced to a term the applicant does not disclose, on 21<sup>st</sup> September 2018 (Mrima, J). He was aggrieved by the outcome, and despite a desire to contest it, he did not file his appeal within the statutory time required as he was not supplied with the copy of records to enable him do so. By an undated notice of motion, he now seeks for extension of time within which to file his appeal which he believes has high chances of success.
2. The respondent through learned Senior Assistant Director of Prosecutions, Ms Ikol-Esaba, who concedes the application, stating that:

“Since it is a 1<sup>st</sup> appeal, he is entitled as of right to seek an appeal. Further the applicant has indicated the reason it took him inordinately long to file the appeal. We shall therefore not be opposing his application and he can be allowed to file a substantive appeal within reasonable timelines.”



3. The issue for determination is whether the applicant is deserving of the orders sought. The Court's unfettered discretion is provided under rule 4 of the Court of Appeal Rules as follows:

The court may, on such terms as it thinks 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.

4. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 which is the locus classicus, laid down the parameters 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 settled 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."

5. How long was the delay in this instance? 8years (Eight). What was the reason? The applicant is a lay person incarcerated; and did not have the advantage of easily reaching the courts to establish the status of his appeal. There is no maximum or minimum period of delay set out under the law, however, the reason or reasons for the delay must be reasonable and plausible. For instance, in *Andrew Kiplagat Chemarungo vs. Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

"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. Under Rule 61 (1) of this Court's Rules:

A person who desires to appeal to the Court shall give Notice of appeal in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

7. The notice of appeal ought to have been lodged within 14 days of the delivery of the decision which it seeks to appeal; that did not happen; nor has the applicant filed and served his record of appeal. I am persuaded that the reason already alluded to posed a challenge to the applicant to act in a timely manner; and also, the sentence the applicant is challenging is one which has had the benefit of favourable emerging jurisprudence, which he might benefit from. In the event that his prayer is denied, it will occasion him great prejudice.

8. Ultimately, I find that the application is merited and is allowed.

The applicant is granted extension of time to file and serve the notice of appeal out of time within fourteen (14) days of today's date. The applicant shall file and serve the respondent with the record of appeal within thirty (30) days upon service of the Notice of Appeal.



**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF JANUARY, 2026.**

**H. A. OMONDI**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

