



REPUBLIC OF KENYA



KENYA LAW
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**Muthoni v Republic (Criminal Application E062 of 2025)
[2026] KECA 34 (KLR) (14 January 2026) (Ruling)**

Neutral citation: [2026] KECA 34 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E062 OF 2025**

A ALI-ARONI, JA

JANUARY 14, 2026

BETWEEN

JOHN RITHO MUTHONI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for extension of time to appeal out of time
against the decision of the High Court of Kenya at Nyeri (M.
Kizito, J.) delivered on 20th May 2025 in HCCRA No. E071 of 2024)*

RULING

1. Before the Court is an application by way of a notice of motion seeking an extension of time to appeal out of time brought under rule 40 of the Court of Appeal Rules ('the Rules'). I believe the application was meant to be brought under rule 4 of the Rules.
2. The application is predicated on the grounds on the face of the application and supported by the affidavit of the applicant stating that he was charged with the offence of grievous harm contrary to section 234 of the Penal Code in Criminal Case No. E326 of 2020 at Nyeri Law Court; he was tried, convicted and sentenced to 20 years' imprisonment; he was dissatisfied with the judgment and appealed to the High Court at Nyeri vide HCCRA No. E071 of 2024; the appeal was dismissed on 20th May 2025.
3. The applicant further avers that he was not supplied with the judgment and now prays that the Court allow him to appeal out of time against the first appellate court's decision; the appeal has a high chance of success; he does not have counsel, and it would also be in the interest of justice to allow him to file the appeal out of time.
4. The respondent has not filed a response, and neither party has filed submissions.



5. I have considered the application and the affidavit in support. The issue for determination is whether the applicant is deserving of an extension of time to file his appeal. Rule 4 of the rules provides that:

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.

6. In *Boniface Emuria Loro vs. Republic* [2003] KECA 91 (KLR), this Court was faced with an application for leave to file an 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.

7. Due to a number of factors that may include the bureaucracy between the Courts and the Prison Department, judgements do not get to the prisoners on time, or if they seek to get copies of the judgment and/or proceedings, this does not happen as quickly as it ought to happen, and gets worse when one is unrepresented. I therefore find the applicant has mounted a plausible explanation for the delay.

8. The applicant has not displayed the grounds of appeal or alluded to any ground save that the appeal has a high chance of success. I attribute this to the fact that he is unrepresented. For now, I will treat this as a technical requirement and will not use it to deny the applicant a chance to ventilate his case in the Court of Appeal, which is likely his last port of call. The application is allowed. The notice of appeal and the record of appeal must be filed within the next fourteen (14) days of today's date.

DATED AND DELIVERED AT NYERI THIS 14TH 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

