

REPUBLIC OF KENYA
IN THE COURT OF
APPEAL AT NAIROBI
(CORAM: E. C. MWITA,
J.A.)

CRIMINAL APPLICATION NO E074 OF 2025

BETWEEN

KIMSON MUTURI MURIITHI

.....
APPLICANT

AND

REPUBLIC

.....
RESPONDENT

*(Being an application for leave to appeal out of time against the judgment of the High Court of Kenya at Nairobi (**Kimaru, J**) dated 18th June 2018*

in

Nairobi Criminal Appeal No 162 Of 2014)

RULING OF THE COURT

1. In the application dated 10th December 2025, the applicant has sought extension of time within which to file an appeal out of time against the judgment of **L. Kimaru J** (as he then was) dated 18th June 2018. The application is premised on the grounds that after the judgment was delivered, the applicant was not aware of the procedure

for filing a second appeal and timelines within which to do so.

2. The applicant only became aware of this right of appeal after receiving legal advice from Justice Defenders legal aid clinic in prison in September, 2025. He promptly took steps and filed this application. The applicant states that the respondent will not suffer any prejudice if the court grants him leave to appeal out of time.
3. The respondent, vide letter dated 24th February 2026, indicated that they were not opposed to the applicant and left the matter at the discretion of the court.
4. Rule 4 of the Rules of the Court give this court discretion to extend the time limited by the rules for the doing of any act authorized or required by the rules. In *Leo Sila Mutiso v Helen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 [1999] 2 EA, this court rendered itself 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; third, (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. The Judgment which the applicant seeks to appeal against, was delivered on 18th June 2018. The present application was filed on 10th December 2025, a delay of nearly 7 years before filing the notice of appeal.
6. The applicant who is incarcerated having been sentenced to death, has stated that he was not aware of the right to file a second appeal and the timelines. He has only filed this application after benefiting from information he received from Defenders of Justice legal aid clinic in prison.
7. Having considered the application and the reasons advanced for failing to file the appeal in time, considering that the application is not opposed and the fact that the application was sentenced to death, I am satisfied that the reasons advanced by the applicant for the delay in filing the notice of appeal in time are reasonable.
8. As the respondent does not oppose the application, I hereby allow the application dated 10th December 2025.
9. The notice of appeal dated 10th December, 2025 shall be deemed as duly filed and served. The memorandum of appeal dated 10th December 2025

shall also be deemed dully filed and served. The record of appeal shall be filed within 30 days from the date hereof.

Dated and delivered at Nairobi this 6th day of March, 2026.

E. C. MWITA

.....
..... **JUDGE
OF APPEAL**

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

Signed

DEPUTY REGISTRAR.

