

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

CRIMINAL APPLICATION NO. E072
OF 2025 BETWEEN
OSCAR KAMBONA MUSYIMI

.....
APPLICANT
AND
REPUBLIC

.....
RESPONDENT

*(Being an application for leave to appeal out of time against the judgment of the High Court of Kenya at Machakos (**Rutto, J**) dated 19th June 2025 in Criminal Appeal No. E011 of 2024)*

RULING OF THE COURT

1. The applicant has brought an application dated 14th November 2025, seeking extension of time within which to file appeal out of time against the judgment of **R. Rutto J** dated 19th June 2025. The application is premised on the grounds that although the judgment was delivered on 19th June 2025, the applicant's family which had promised to hire an advocate to file the appeal was unable to do so thus, the reason why the applicant could not file the

second appeal within time.

2. By letter dated 24th February 2026, the respondent indicated that they were not opposed to the applicant and left the matter at the discretion of the court.

3. 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 held 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.

4. The Judgment which the applicant seeks to appeal against, was delivered on 19th June 2025. The present application was filed on 14th November 2025, a delay of nearly 5 months.

5. The applicant who is incarcerated has stated that he was expecting his family to facilitate an advocate to take up

the matter and file an appeal. When they failed to get an advocate, he filed this application in November 2025 from prison where he is serving sentence.

6. Having considered the application and the reasons advanced for failing to file the appeal in time, considering that the application is not opposed as well as the period of delay, I am satisfied that the reasons advanced by the applicant in explaining the delay in filing the notice of appeal in time are satisfactory.
7. As the respondent has not opposed the application, I hereby allow the application dated 14th November, 2025.
8. The notice of appeal dated 14th November 2025 shall be deemed as duly filed and served. The memorandum of appeal dated 14th November 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.