

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

**CRIMINAL APPLICATION NO E073  
OF 2026 BETWEEN  
BEN THUO KOMO**

.....  
**APPLICANT**

**AND**

**REPUBLIC**

.....  
**RESPONDENT**

*(Being an application for leave to appeal out of time against the judgment of the High Court of Kenya at Kibera (**Kavedza, J**) dated 28<sup>th</sup> April 2025*

*in*

*Kibera Criminal Appeal Nos, E028 of 2024 as  
Consolidated with E029; E030 and E031 of 2024)*

\*\*\*\*\*

**RULING OF THE COURT**

1. The applicant has brought an application dated 9<sup>th</sup> December 2025, seeking extension of time within which to file appeal out of time against the judgment of **D. R. Kavedza J** dated 28<sup>th</sup> April 2025. The application is premised on the grounds that although the judgment was delivered on 28<sup>th</sup> April 2025, the applicant who was unrepresented, was not aware of the timelines within which to file a second appeal.

2. The applicant states that he was not represented during the first appeal and was therefore unaware of the procedure for filing a second appeal and timelines within which to do so. He only became aware of this right of appeal after receiving legal advice from Justice Defenders legal aid clinic in prison in September, 2025. He then promptly filed the present application.
3. The respondent vide letter dated 24<sup>th</sup> February 2026, indicated that they are 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 28<sup>th</sup> April 2025. The present application was filed on 9<sup>th</sup> December 2025, a delay of nearly 8 months before filing the notice of appeal.
6. The applicant who is incarcerated has stated that he was not aware of the procedure for filing a second appeal and has only filed this application after benefiting from advice he got from Defenders of Justice legal aid clinic in September, 2025 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, the period of delay and the fact that the application was sentenced to 30 years imprisonment, I am satisfied that the reasons advanced by the applicant explaining the delay in filing the notice of appeal in time are reasonable.
8. As the respondent has not opposed the application, I hereby allow the application dated 9<sup>th</sup> December, 2025.
9. The notice of appeal dated 9<sup>th</sup> December 2025 shall be deemed as duly filed and served. The memorandum of

appeal dated 9<sup>th</sup> 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 6<sup>th</sup> day of March, 2026.**

**E. C. MWITA**

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

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

**Signed**

**DEPUTY REGISTRAR.**

