



REPUBLIC OF KENYA



KENYA LAW
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**Katuu v Republic (Criminal Application E002 of 2026)
[2026] KECA 454 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 454 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E002 OF 2026
EC MWITA, JA
MARCH 6, 2026**

BETWEEN

SIMON MUIA KATUU APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time against the judgment of the High Court of Kenya at Kajiado (S.N. Mutuku, J) dated 24th September 2024 in Kajiado Criminal Appeal No. E052 of 2021)

RULING

1. In the application dated 13th January 2026, the applicant has sought extension of time within which to file appeal out of time against the judgment of Mutuku J dated 24th September 2024. The application is premised on the grounds that immediately after the judgment was delivered, the petitioner instructed the advocate representing him to file an appeal. The advocate informed him that he had filed a notice of appeal which the applicant believed.
2. However, the applicant later learnt from the documentation office at Maximum Prison that no notice of appeal was filed. The applicant instructed his current advocate to file an appeal thus, this application. The applicant argues that the delay in filing the appeal is excusable and urges this court to exercise its discretion and extend time for filing appeal out of time.
3. In the letter dated 24th February 2026 the respondent indicated that they were not opposing the application 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. Judgment which the applicant seeks to appeal against was delivered on 24th September 2024 while the present application was filed on 13th January 2026, a delay of nearly a year and three months before filing the notice of appeal.
6. The applicant who is incarcerated has averred through his advocate that his previous advocate made him believe that he had filed a notice of appeal, and given the restrictions he is under, it was difficult for him to know that a notice of appeal had not been filed in time.
7. Having considered the application and the reasons advanced for failing to file the appeal in time. I am satisfied with the reasons for the delay in filing the notice of appeal on time.
8. As the respondent has not opposed the application, I hereby allow the application dated 13th January, 2026.
9. The Applicant is hereby granted leave to file a notice of appeal within 14 days. The notice of appeal shall thereafter be served within seven days of its filing. The memorandum of appeal and the record thereof shall thereafter be filed within 30 days from the date of filing the notice of appeal.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2026.

E. C. MWITA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

