



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukhwana v Republic (Criminal Application E071 of 2025)  
[2026] KECA 455 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 455 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E071 OF 2025**

**EC MWITA, JA**

**MARCH 6, 2026**

**BETWEEN**

**FRED NYONGESA MUKHWANA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to appeal out of time against the  
Judgment of the High Court of Kenya at Thika (B. Musyoki, J) dated  
7th November 2025 in Thika Criminal Appeal No. E019 of 2014)*

**RULING**

1. The applicant has brought this application dated 21<sup>st</sup> November 2025, seeking extension of time within which to file his appeal out of time against the judgment of BM Musyoki J dated 7<sup>th</sup> November 2025. 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. He was not represented and is an indigent person thus, was not able to act immediately and file a notice of appeal on time.
2. The respondent, vide letter dated 24<sup>th</sup> February 2026, indicated that he is 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 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.

4. The Judgment which the applicant seeks to appeal against, was delivered on 7<sup>th</sup> November 2025. The present application was filed on 21<sup>st</sup> November 2025.
5. The applicant who is incarcerated wants to exercise his right to challenge the decision of the High Court before this Court and has filed this application seeking extension of time to appeal.
6. Having considered the application and the reasons advanced in support of the application, considering that the application is not opposed,
7. I hereby allow the application dated 21<sup>st</sup> November 2025.
8. The notice of appeal dated 21<sup>st</sup> November, 2025 shall be deemed as duly filed and served. The memorandum of appeal also dated 21<sup>st</sup> 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 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**

