

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

**CRIMINAL APPLICATION NO E001
OF 2026 BETWEEN
CLIFORD OTIENO ODUNY**

.....
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 (R Nyakundi, J) dated 30th January 2017

in

Kajiado Criminal Case No 7 of 2015)

RULING OF THE COURT

1. The applicant has brought an application dated 8th January 2026, seeking extension of time within which to file an appeal out of time against the judgment of **Nyakundi, J** dated 30th January 2017. The application is premises on the grounds that, although the judgment was delivered on 30th January 2017, the applicant was not aware of the timelines within which to file an appeal.

2. The applicant states that he was unrepresented during trial and was therefore unaware of the procedure for filing an appeal and timelines within which to do so. He only became aware of his right of appeal after receiving legal advice from Justice Defenders legal aid clinic in prison in September, 2025. He then promptly took steps and filed this application.
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 30th January 2017. The present application was filed on 8th January 2026, a delay of nearly 8 years before filing the notice of appeal.
6. The applicant who is incarcerated, has stated that he was not aware of the procedure for filing an appeal and has only filed this application after benefiting for 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 for 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 8th January, 2026.
9. The notice of appeal dated 8th January, 2026 shall be deemed as duly filed and served. The memorandum of

appeal dated 10th January 2026

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.

