



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chabari v Republic (Criminal Application E068 of 2025)  
[2026] KECA 15 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 15 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E068 OF 2025**

**A ALI-ARONI, JA  
JANUARY 23, 2026**

**BETWEEN**

**JAPETH NJAGI CHABARI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application seeking leave to appeal out of time against the decision of the High Court at Chuka (Gitari, J.) delivered on 18th August 2021 in HCCRA No. E006 of 2020)*

**RULING**

1. Before the Court is an application by way of an undated notice of motion brought under rule 40 of the Court of Appeal Rules ('the Rules'), seeking leave to appeal out of time.
2. The application is predicated on the grounds on the face of the application, and rehashed in the supporting affidavit of the applicant in which he deposes that he was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code and sentenced to life imprisonment at Marimanti Law Court; he filed an appeal which was later dismissed. He filed his second appeal in time while at Embu GK Prison Documentation Office, but has since been transferred to another prison; he later learnt that he did not have an appeal pending in this Court.
3. He contends that the appeal has a high chance of success if heard and determined and it is for this reason, he seeks this Court to grant him a chance to appeal out of time in the interest of justice. The mistake was not intended.
4. The applicant has not filed submissions.
5. The respondent filed submissions dated 15<sup>th</sup> January 2026, indicating that the application is not opposed.



6. I have considered the application, the affidavit in support and the respondent's submissions. The issue for determination is whether to grant leave to the applicant to file his appeal out of time.
7. Rule 4 of the Rules governs the extension of time. The rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules. It provides as follows:

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

8. A litigant has the Constitutional right to pursue his matter to the highest level available under the law. The applicant was charged before the Magistrate's Court, was dissatisfied with the conviction and sentence, appealed to the High Court, and is dissatisfied with the outcome of his first appeal and seeks to appeal to this Court. He has explained the delay in lodging his appeal, and states that he has all along wanted to appeal to this Court.
9. In the often-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi, Civil Application No. Nai 255 of 1997, this Court stated 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 stated 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, thirdly (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."

10. I find that the applicant has sufficiently explained the delay. Further the respondent has not opposed the same.
11. I allow the application. The notice of appeal and the record of appeal be filed within the next 30 (thirty) days of this ruling.

**DATED AND DELIVERED AT NYERI THIS 23<sup>RD</sup> DAY OF JANUARY, 2026.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

