



**Republic v Nyaga (Criminal Miscellaneous Application
E168 of 2025) [2026] KEHC 1204 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL MISCELLANEOUS APPLICATION E168 OF 2025
RM MWONGO, J
JANUARY 27, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

NGARI NYAGA RESPONDENT

RULING

The Application

1. The applicant filed a notice of motion dated 12th March 2025 premised on the grounds on its face and in the supporting affidavit thereof. The following orders are sought in the application:
 1. That the Applicant be granted leave to file an Appeal out of time against the acquittal of the Respondent under Section 215 of the Criminal Procedure Code, in Siakago Resident Magistrate’s Court Criminal Case No. E568 of 2024 on 24th December, 2024; and
 2. That the Petition of Appeal annexed to the application be deemed as duly filed.
2. The applicant stated that when the judgment was delivered, the complainant was not aware of the judgment date. When he visited the ODPP on 22nd January 2025, he learned that the judgment had been delivered and he was dissatisfied with the findings of the trial court. The ODPP wrote a letter dated 24th January 2025 to the court seeking typed proceedings for purposes of appeal. The typed proceedings were received on 12th February 2025, by which time the period for appealing had lapsed. It argued that the delay was reasonable and not intentional.

Replying Affidavit

3. In his replying affidavit, the respondent stated that the prosecution has all the resources to appeal on time and if it had meant to appeal out of its own free will, it would have done so immediately. That the



applicant was aware of the judgment but did not think to appeal immediately without interference by a third party. He stated that there is no plausible reason why the appeal was not filed on time and he urged the court to dismiss the application,

Parties' Submissions

4. The application was canvassed by way of written submissions.
5. The applicant relied on section 349 of the Criminal Procedure Code and the cases of *Muthike v Republic* [2025] KECA 1502 (KLR) and *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231. It argued that the order may be granted on discretion and that the reasons provided for the delay in appealing are fair and just.
6. The respondent relied on the cases of *Dande & 3 others v Inspector General, National Police Service & 5 others* [2023] KESC 40 (KLR) and *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR). He argued that in light of Article 157(10&11) of the *Constitution*, the court must be persuaded to grant leave to appeal out of time through the explanation given, which has not been done in this case.

Issue for Determination

7. The issue for determination is whether the application has merit.

Analysis and Determination

8. The applicant seeks an order that it be granted leave to appeal out of time and that the petition of appeal annexed to the application be deemed as duly filed. The applicant failed to appeal out of time because the complainant did not see the judgment of the court until close to one month after it was delivered. After the complainant visited the offices of ODPP, the prosecuting counsel commenced the process of requesting for certified proceedings for purposes of appeal, something it had not considered before.
9. Section 349 of the Criminal Procedure Code permits this court to exercise its discretion in enlarging time to appeal for good cause. The provision states:

“An appeal shall be entered within fourteen days of the date of the order or sentence appealed against:

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.” [Emphasis added]

10. This provision presupposes that the accused person's advocate will have taken adequate steps towards lodging the appeal. In this case the state argues that it encountered hitches along the way. It is also important to note that within the provided 14 days, the appealing party should have made clear and evident efforts to request for the copies of judgment/order and proceedings. In this case, the impugned judgment was delivered on 24th December 2024. The ODPP, the intended appellant, only applied for the proceedings one month later on 24th January 2025, after being prompted to do so by the victim. This suggests that the DPP in his own right, found no reason or basis to appeal until prompted.



11. Leave to appeal out of time is a discretionary relief, and the court may grant it depending on the circumstances foreseeable in the Criminal Procedure Code. In the case of Samson Owiti Otambo v Republic [2018] KEHC 6177 (KLR) the court stated:

“The Jurisdiction of this Court to hear and determine the appeal is determined by the appeal being filed within the statutory period or within the enlarged period of time with leave of Court.”

Disposition

12. In this case, it is evident that the applicant did not have the intention to appeal at all, until the complainant prompted it. By that time the 14 days allowed for appealing had long lapsed. It does not appear that the applicant was keen on an appeal at all. The application is therefore for dismissal.
13. Accordingly, both prayers in the application are disallowed and dismissed.
14. Orders accordingly.

DELIVERED ELECTRONICALLY, DATED AND SIGNED AT EMBU HIGH COURT THIS 4TH DAY OF FEBRUARY, 2026, PURSUANT TO NOTICE ISSUED ON 27TH JANUARY, 2026 AS TO ELECTRONIC DELIVERY.

R. MWONGO

JUDGE

