

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**MISC. CRIMINAL APPLICATION NO. E071 OF 2025**

**EDWIN ONGERI NYANUGA .....**  
**.....APPLICANT**

**VERSUS**

**REPUBLIC**

**.....RESPONDENT**

**RULING**

1. This application was filed seeking leave to appeal out of time for reasons that:-
- a) It is in the interest of justice I be allowed to appeal out of time.
  - b) I am a pauper and could not afford a lawyer to file an appeal on time.
  - c) The Honorable Court to grant leave as prayed, as the delay was occasioned by the challenges in custody, being uneducated, and the inability to afford legal representation, whereas the appellant intends to appeal to the High Court from the judgment and sentence of the trial court delivered on 17/07/2023 and 24/07/2023, respectively.

- d) The application is filed alongside a petition of appeal and the grounds thereto.
- e) This Honourable Court be pleased to grant as prayed herein.

2. The reason given was that the applicant could not afford a lawyer. Judgment and sentence were delivered between 17/7/2023 and 24/07/2023. The application was opposed. The respondent stated that the applicant has already filed an application and admitted that he is not opposing the conviction. However, the applicant made an application dated 14/8/2023. This was done barely a month after the sentence was imposed. The applicant only sought for the period in custody. This court made a ruling on 17/9/2025. The ruling is reported as **Nyanuga v Republic [2025] KEHC 12775 (KLR)**. In that ruling, this court held as follows:

In the upshot, I make the following orders:

The application is not merited and is dismissed.

The sentence of 15 years imprisonment is upheld.

The term of 15 years imprisonment shall run from 1.2.2023, when the Applicant was arrested.

The file is closed.

3. The applicant in the said application had indicated as follows:

**That the sentence was harsh and did not consider that he was a first offender,**

**remorseful, had undergone rehabilitation, and had spent time in custody.**

4. Having admitted that he was not contesting the conviction in an earlier application, he cannot turn around two years later and state that he could not raise money. Prisoners' filing is waived. The applicant was well aware of his rights and only ran around after losing the application for review. The question thus is whether the reasons given are genuine. Though the applicant is a pauper, there is no fees payable for filing the appeal.
5. The applicant has already sought review. In review, he has stated that he was not contesting the conviction. This has not changed, and the applicant cannot be allowed to prevaricate between the positions he had already taken and those he now holds. The principles for extension of time are set out in the case of **Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)** as follows: \_

Discretion to extend time was indeed unfettered. It was incumbent upon the applicant to explain the reasons for the delay in making the application for extension and whether there were any extenuating circumstances that could enable the court to exercise its discretion in favour of the applicant.

The court ought to consider the following principles in exercising the discretion to extend time for filing an appeal:

- a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
  - b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
  - c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
  - d. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
  - e. Whether there would be any prejudice suffered by the respondents if the extension was granted;
  - f. Whether the application had been brought without undue delay; and;
  - g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
6. In this case, the delay was caused by an application for review which has since been dismissed. The applicant has already admitted in court that he is not appealing as the evidence

against him is watertight. There are no materials placed before the court to exercise discretion in his favour. In the circumstances, the application filed on 15.11.2025 is dismissed for lack of merit.

Determination

7. In the upshot, I make the following orders: -

- a) In the circumstances, the application filed on 15.11.2025 is dismissed for lack of merit.
- b) The file is closed.

**DELIVERED, DATED** and **SIGNED** at **NYERI** on this **11<sup>th</sup>** day of **March, 2026**. Ruling delivered extempore through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

**In the Presence of:-**

Pro Se Applicant

Mr. Kihara for the Respondent

Court Assistant - Michael