



**Wachira v Republic (Criminal Application E008 of 2026)
[2026] KECA 657 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 657 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E008 OF 2026
S OLE KANTAI, JA
MARCH 25, 2026**

BETWEEN

ELIUD MUHORO WACHIRA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to lodge an appeal out of time against the Judgment of the High Court of Kenya at Nyeri (W. Micheni, J.) delivered on 31st July, 2024 in H.C.CRA. No. E049 of 2021.)

RULING

1. The Motion by the applicant Eliud Muhoro Wachira is said to be brought under rule 113 of the Court of Appeal Rules, 2010 where he prays that time to lodge appeal be extended and notice of appeal to be filed out of time be deemed as duly filed with leave of court; that he be granted a waiver of fees as he is a pauper. He says in grounds in support of the application and in his supporting affidavit that he is in prison custody unable to pay fees as he is a pauper; that his constitutional rights to appeal will be threatened if leave is not granted; that his intended appeal has high chances of success; that “...the omission was occasioned by the fact that, the applicant was not supplied with the lower courts record/proceedings and judgment to enable him appeal on time, thus, not intentional...”; that the Judge of the High Court erred when he found that the applicant was identified which was not supported by evidence; that evidence was marred by inconsistencies; that defilement was not proved, that his defence was ignored; that section 333(2) Criminal procedure Code was not considered or applied. He prays, curiously as I cannot do that in the application, that the conviction be quashed, sentence be set aside and he be set at liberty; that the evidence be re-evaluated.
2. I have seen and considered the applicant’s submissions.



3. I note the hearing notice dated 25th February, 2025 to nyeri@odpp.go.ke evidence that the respondent was served. I have not seen any replying affidavit or written submissions from the Office of Director of Public Prosecutions.
4. The application is principally on extension of time which is provided for under rule 4 of the rules of this Court.
5. In the oft-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997 the principles that apply in an application for leave to extend time for doing any act under the rules of this Court were recognized to be to be:

"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."
6. The applicant has not assisted me by telling me when he was convicted or when the first appeal was dismissed. What he says is that he is a convict in prison; that he was not supplied with proceedings of the High Court to enable him appeal; that he is a pauper unable to pay any fees to enable him appeal. I note further that the applicant is unrepresented and may not be possessed of facilities to enable him comply with strict timeliness for filing an appeal to this Court. The respondent has not opposed the application. I am prepared in the circumstances enumerated by the applicant to exercise discretion in his favour and allow him to appeal which right he correctly says is a constitutional one.
7. I allow the Motion only to the extent that the applicant is to file a Notice of Appeal within fourteen (14) days and file record of appeal within twenty one (21) days thereafter. As the applicant is a pauper I waive court filing fees.

DATED AND DELIVERED AT NYERI THIS 25TH DAY OF MARCH, 2026.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

