



REPUBLIC OF KENYA



KENYA LAW
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**Sitoya v Republic (Criminal Application E011 of 2025)
[2026] KECA 814 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 814 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E011 OF 2025**

JO OKELLO, JA

APRIL 30, 2026

BETWEEN

JOSHUA KOIKAI SITOYA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an appeal out of time against the conviction and sentence of the High Court of Kenya at Kajiado (R. Nyakundi, J.) delivered on 20th April, 2017 in HC.CR.C. No. 44 of 2015)

RULING

1. By a undated notice of motion dated, the applicant, applied for leave to file the Notice and Memorandum of Appeal out of time against the judgment delivered on 20th April, 2015 in High Court Criminal Case No. 44 of 2015 at Nairobi.
2. The matter came up for hearing by way of written submissions on 20th April, 2026. However, there were no written submissions filed by both parties. There was proper service effected on 13th April, 2026.
3. The applicant's case is premised on the grounds stated on the face of the application and the supporting affidavit of the applicant herein. The respondent did not file any response to the application.
4. In the application and the supporting affidavit therein, the applicant avers that he be granted leave to appeal out of time as an indigent person. The applicant avers the filed petition grounds of appeal be considered. He has deposed the same grounds in his supporting affidavit. The applicant has attached a



petition of appeal praying for leave to file an appeal against both conviction and sentence on grounds that —

- a. The Hon. High Court judge erred in matters of law by failing to note that the appellant’s rights to a fair trial were violated and this rendered the whole process null and void;
 - b. That the Hon. High Court judge erred in matters of law by failing to take into account Section 333(2) of the Criminal Procedure Code as regards the sentence of the appellant herein.
5. He concludes his petition by praying to the Court that his appeal against sentence only succeeds in its entirety, the time spent in remand custody be computed in his sentence commence from the date of arrest.
 6. He further deposed that his family had promised to secure legal counsel to pursue his appeal but failed hence he did not file the appeal within the time as contemplated by law. He avers that the appeal has very high chances of success if heard and determined.
 7. The application is not opposed by the respondent as there is no response on record.
 8. Rule 4 of the Court of Appeal Rules provides:

“The Court may, on such terms as it thinks 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.”
 9. Under Rule 4 of the Court of Appeal Rules, 2022, an extension of time is a discretionary power grantable on well settled principles. In *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* [1991] eKLR, the Court set out the principles to include the length of the delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, and the conduct of the parties. The principles that guide this Court in determining whether to extend time pursuant to Rule 4 of the Rules of this Court were rehashed in *Mwangi vs Kenya Airways* [2003] KLR 486 at page 489 the Court stated thus:

“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under Rule 4. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997, the Court expressed itself thus: It is now well settled that the decision whether to extend the time 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; thirdly (possibly), the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted”.
 10. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicant in the undated Notice of Motion should be granted. The applicant’s prayers are that the Honourable Court extend time and grant leave to allow the applicant to file appeal out of time against the judgment dated 20th April, 2017 in *Kajiado HCCR No. 44 of 2017*.



11. Having perused and considered the application, the supporting affidavit, and the record of appeal attached herein, the law, this Court is now called upon to determine whether the application meets the threshold for enlargement of time.
12. The first issue of consideration is the length of delay. From the records, the judgment in issue was delivered on 20th April, 2017, where upon the applicant had 14 days within which to file the notice of appeal i.e., 4th May 2017. In *Muya vs Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya*, Judge of the High Court of Kenya (Petition No. 4 of 2020) [2022] KESC 37 (KLR) was held that “where there is delay, the Court must interrogate whether the same is justifiable and thus excusable, or not. In order to do that, the Court must interrogate the circumstances of the case.”
13. Thus, the length of delay is considered on a case-by-case basis.

Noting that the notice of appeal ought to have been filed on or before 4th May, 2017 and that the application for leave to file an appeal out of time has been filed nine years after the said date, and further that no satisfactory explanation and justification has been given, I find that the delay is inordinate and undeserving of this Court’s discretion to extend the time.
14. Therefore, having considered the application, the supporting affidavit and the law, Rule 61(1) of the Court of Appeal Rules, 2022 provides that a person who desires to appeal to the Court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal. The judgment the subject of appeal was delivered on 20th April, 2017 while the instant application is undated but appears to have been filed sometime in 2025, which is nine years after the delivery of the High Court judgment. This Court cannot countenance the applicant’s indolent.
15. On the reason for delay, the applicant, deposed in his undated supporting affidavit sworn and filed sometimes in 2025 that the delay in filing an appeal was attributed to the fact that his family was unable to secure for him legal representation to pursue his appeal. He has however not produced an iota of evidence to show these alleged attempts and instead, he pleads that being an indigent he be exempted from paying any cost associated with the application.
16. On whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the applicant. A quick perusal of the record of appeal attached herein, I’m persuaded that the appeal is arguable.
17. Finally, on the degree of prejudice, the applicant is praying for leave to appeal against conviction and sentence on the offence of manslaughter contrary to Section 202 as read together with section 205 of the Penal Code, Cap 63. Litigation has to come to an end and resurrecting this matter nine years after judgment was delivered is definitely prejudicial to the victim and the public at large.
18. In the circumstances, the applicant has not persuaded this Court that his application is deserving. This Court therefore, finds no merit in this application.
19. Consequently, for the reasons stated, the application for leave to file appeal out of time is dismissed.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

DR. J. O. OKELLO

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JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR.

