



**Mburu v Republic (Criminal Application E012 of 2026)  
[2026] KECA 861 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KECA 861 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E012 OF 2026**

**AI HASSAN, JA**

**MAY 5, 2026**

**BETWEEN**

**MOSES WAINAINA MBURU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for extension of time to appeal from the  
Judgment of the High Court of Kenya at Naivasha (Grace Nzioka,  
J.) delivered on 21st November, 2025) in HCCR NO. E005 OF 2021)*

**RULING**

1. The applicant Moses Wainaina Mburu seeks extension of time to allow him to lodge an appeal out of time against a decision of the High Court of Kenya at Naivasha in Criminal Case No. E005 of 2021 which convicted and sentenced him to life imprisonment for the offence of murder contrary to Section 203 of as read with Section 204 of the Penal code.
2. The application is brought under Rule 4 of the Court of Appeal Rules. It is supported by an undated affidavit that is finger- printed without clear evidence whether it was commissioned. In it, the applicant indicates that the delay in lodging the appeal within the statutory period was occasioned by a delay in transmission of the typed court proceedings and the copy of the judgment. The Director of Public Prosecutions did not oppose the application.
3. The Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] crystallised the principles governing extension of time as follows :-
  - i. Extension of time being not a right of a party, but an equitable remedy that is only available to a deserving party at the discretion of the Court;



- ii. The party who seeks extension of time has the burden of laying a basis to the satisfaction of the Court;
  - iii. Whether the Court should exercise the discretion to extend time is a consideration to be made on a case-by-case basis;
  - iv. Where there is a reasonable cause for the delay, the same should be expressed to the satisfaction of the Court;
  - v. Whether there will be any prejudice suffered by the respondents if extension is granted;
  - vi. Whether the application has been brought without undue delay;
  - vii. In certain cases, like election matters, public interest should be a consideration for extending time.
4. The length of delay in lodging the instant application is approximately four months. I find that the delay is not inordinate. The respondent concedes that the delay is not inordinate. I am also cognizant of the constraints that an incarcerated prisoner without legal representation operates under in an effort to pursue legal redress. The applicant is condemned to life imprisonment for the offence of murder. I am inclined to adopt a more accommodating stance and to overlook omissions to enable the applicant pursue his appeal. I exercise my discretion in order to allow him to pursue his right of appeal, on sentence and conviction.
5. In the result, I allow the application and direct that the applicant do file a notice of appeal within fourteen (14) days of this ruling. The prison authorities should extend to the applicant such assistance as will ensure the notice is filed and lodged at the registry of this Court within the time I have stipulated.

**DATED AND DELIVERED AT NAKURU THIS 5<sup>TH</sup> DAY OF MAY, 2026.**

**AHMED ISSACK**

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR**

