



REPUBLIC OF KENYA



KENYA LAW
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**Tanui v Republic (Criminal Application E228 of 2024)
[2025] KECA 381 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 381 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E228 OF 2024
MA WARSAME, JA
FEBRUARY 28, 2025**

BETWEEN

JULIUS KIPLANGAT TANUI APPLICANT

AND

REPUBLIC RESPONDENT

(An application for extension of time to file an appeal against the Judgment of the High Court at Nakuru (Gikonyo, J.) dated 23rd July 2024 in HCCRA No. E035 OF 2023)

RULING

1. The applicant was charged and convicted of robbery with violence contrary to Section 290(2) of the [Penal Code](#) in SPM Criminal Case No 76 of 2019 and sentenced to 20 years.
2. Aggrieved, the applicant appealed to the High Court and in a judgment dated 23rd July 2024 his appeal was dismissed and both conviction and sentence were upheld.
3. The applicant now wishes to appeal the High Court decision and seeks leave to appeal out of time vide a notice of motion dated 4th November 2024. He proffers a single reason for the delay, that he depended on his 76-year old father to procure a new advocate but due to financial difficulties he was unable to do so. The application is supported by an affidavit sworn by David Kiptanui, the applicant's father, who depones that he was unwell and expended every coin in taking care of his health, he was unable to maintain the service of the applicant's former Advocate due to lack of funds, that after his recovery he liquidated some of his assets and was able to retain the current advocate and that it is in the interest of justice that the application be allowed.
4. The respondent through written submissions contended that it did not oppose the application given that the sentence meted out was lengthy and this was his first appeal.



5. Rule 4 of the Court of Appeal Rules governs the extension of time. The rule allows this Court to exercise discretion to extend the time limited by the Rules for the doing of any act authorised or required by the Rules. In *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

It is now well settled that the decision whether or not to extend the time for appealing 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 the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.

4. I have perused the application and the affidavit in support of the application and find that the delay of about 3 months is not inordinate. In the circumstances, I find the explanation given plausible. I see no serious prejudice that would be suffered by the respondent if the application is granted.
5. The application is allowed. I direct that the appeal be filed within the next 30 days

DATED AND DELIVERED AT NAKURU THIS 28TH DAY OF FEBRUARY, 2025.

M. WARSAME

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

