



**Mitami v Republic (Criminal Application E222 of 2024)  
[2025] KECA 244 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KECA 244 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E222 OF 2024  
JM MATIVO, JA  
FEBRUARY 20, 2025**

**BETWEEN**

**DATIYO NAMPASO MITAMI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nyandarua (C. Karanja, J.) dated 7th March, 2024 in CRA No. 4 of 2020)*

**RULING**

1. The application before the Court is dated 1<sup>st</sup> November, 2024.  
The main prayer is for leave to appeal out of time against the judgment issued in HCCRA No. 4 of 2020, on 7<sup>th</sup> March, 2024.
2. The applicant, Datiyo Nampaso Mitami jointly with others were arraigned before the Magistrate's Court in Criminal Case No. 1326 of 2016 at Nyahururu charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. He was convicted on two counts of robbery with violence and sentenced to death which sentence was later commuted to life imprisonment.
3. The applicant's appeal to the High Court against conviction and sentence was dismissed, but, although aggrieved he failed to lodge his notice of appeal within the statutory stipulated time of 14 days. The applicant contends that he was not able to appeal on time because he was not supplied with the Court's Judgment. His present application invokes Rule 4 of the Court of Appeal Rules to enlarge the time to file his appeal.
4. The respondent has not complied with the directions issued by the Deputy Registrar on 24<sup>th</sup> December, 2024. Therefore, the instant application is not opposed.



5. I have considered the application, and the supporting affidavit sworn on 1<sup>st</sup> November, 2024. It is evident that there has been a delay of approximately 7 months in filing his appeal against the judgment of the High Court. I find that the delay is not inordinate.
6. The Supreme Court of Kenya pronounced itself on the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
7. I have considered that the applicant is imprisoned for life. The reason in support of the application is plausible and satisfactory. I am inclined to exercise my discretion in his favour. I direct the applicant to file his notice of appeal within the next 14 days and the memorandum of appeal and the record of appeal within 45 days thereafter.

**DATED AND DELIVERED AT NAKURU THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR.**

