



REPUBLIC OF KENYA



KENYA LAW
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**Dida v Republic (Criminal Application E006 of 2025)
[2025] KECA 363 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KECA 363 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E006 OF 2025
A ALI-ARONI, JA
FEBRUARY 19, 2025**

BETWEEN

HALKANO GALGALO DIDA APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Marsabit (Njagi, J.) dated 5th December 2024 in HCCR. No. E009 of 2022)

RULING

1. Before the court is an undated notice of motion filed under Rules 31 and 32 of the Court of Appeal Rules 2022 seeking leave to file an appeal out of time.
2. The application is based on the grounds that the applicant was charged with the offence of murder, tried, convicted and sentenced to 20 years imprisonment on 5th December 2024; he is dissatisfied with the judgment and is desirous of appealing against the judgment.
3. The application is further supported by the applicant's undated affidavit, where he deposed that on the day the judgment was delivered, he was not provided with a copy of the judgment, which prevented him from filing an appeal in a timely manner. He argues that his appeal has a strong likelihood of success and that granting the requested orders would serve the interest of justice.
4. I have considered the application and the affidavit in support. The issue for determination is whether the applicant deserves the orders sought. 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 doing any act authorized or required by the rules. In the case of Boniface Emuria Loro vs. Republic [2003] KECA 91 (KLR), this Court was faced with an application for leave to file an appeal out of time. The main reason for the delay in filing the appeal within the prescribed period was that the applicant was not supplied with a copy of the judgment in time. The application was allowed.



Similarly, in the case of Ngige vs. Republic [2024] KECA 848 (KLR), the court held; -

“The application is unopposed.

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 authorized or required by the Rules.

I have considered the application and find the delay explained as having been caused by slow administrative action to supply the proceedings of the superior court in time for the filing of the appeal before expiry of time limited to do so. In the premises, I find merit in this application.”

5. As noted above, the State has not opposed the application. Secondly, the applicant has given a plausible reason. Judgments are not always readily available immediately after they are delivered, and when ready, the transmission from the registry to prisons is not flawless. The application is merited and is hereby allowed.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF FEBRUARY, 2025.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

