



**Lelemusi v Republic (Criminal Application E010 of 2025)  
[2025] KECA 598 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KECA 598 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E010 OF 2025  
JW LESSIT, JA  
MARCH 14, 2025  
[IN CHAMBERS]**

**BETWEEN**

**BUNGE LELEMUSI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for leave to file an appeal out of time from the Judgment of Nanyuki High Court (M. Kasango, J.) delivered on 25th May 2017 in HC CR.A. No. 112 of 2016)*

**RULING**

1. The applicant has premised his application under rule 113 of the [Court of Appeal Rules](#) 2010. He seeks leave to lodge his appeal out of time against the judgment of the first appellate court in Nanyuki High Court Criminal Appeal No. 112 of 2016 and to have his notice of appeal as filed be deemed to be properly filed. He also states that he is in prison custody and therefore a pauper and is unable to pay the fees for filing the appeal.
2. The applicant has urged that he was not able to file his appeal in time and has explained that the reasons for the delay was he did not obtain the proceedings and the judgment of the first appellate court in time. He also explained that he was under hospitalization for long period for mental illness causing him further delay for no fault of his own.
3. I have seen a hearing notice dated 27<sup>th</sup> February 2025 to nyeriodpp@go.ke showing that the office of the Director of Public Prosecutions was served. I do not see any response or written submissions from the respondent even though he was required to file them in the hearing notice.
4. The applicant has filed supporting affidavit in which he reiterates what is stated on the face of the application, and which I have noted.



5. The law is settled in terms of what an applicant needs to establish in order for the Court to exercise its discretion in his favour. In that regard, 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.”

6. The applicant intends to appeal against the judgment of the High Court delivered by Kasango, J. on the 25<sup>th</sup> May 2017.

This application was filed on 2<sup>nd</sup> February 2025 according to the Prison Stamp on the application. The delay involved is therefore seven (7) years and three (3) months.

7. The Supreme Court of Kenya pronounced itself on the question of delay in an application for extension of time in the case of *Andrew Kiplagat Chemaringo v. 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.”

8. The applicant has given an explanation that he was of unsound mind when he committed the offence and that on 2<sup>nd</sup> November, 2011 he was taken for mental assessment to Mathari Mental Hospital, Nairobi where he was admitted until 4<sup>th</sup> February, 2013. He explained that the delay in filing his appeal was caused by the fact he was unable to get the proceedings and judgment in good time. Further, he states that he is in prison custody and unable to raise filing fees and so seeks to have fees for the application waived.

9. The delay involved in this matter is quite long. I do not have the advantage of seeing the proceedings as they are not attached here, and most likely they may yet be ready. That notwithstanding, considering the short history of the applicant in custody in prison and also in the Mental Hospital, I am convinced that in the interest of justice, the delay should be excused. I am therefore satisfied that given the fact the applicant is in prison, the reason he has given as the reason for his inability to file his appeal on time is reasonable and satisfactory.

10. I have also seen his memorandum of appeal attached to this application. I am satisfied that it raises reasonable grounds of appeal touching on his constitutional rights and the jurisdiction of the first appellate court.

11. In the result, I find that the applicant is deserving of the exercise of discretion in his favour and do grant the application dated and filed on February 4, 2025. The applicant is granted leave to file his appeal out of time. The filing fees are waived. The Deputy Registrar of this Court to coordinate with the Deputy Registrar of the respective High Court to ensure that the appeal is processed and filed within a reasonable time.

**DATED AND DELIVERED AT NYERI THIS 14<sup>TH</sup> DAY OF MARCH, 2025.**



**J. LESIIT**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

*signed*

**DEPUTY REGISTRAR**

