



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**PMW v Republic (Criminal Application E004 of 2025)
[2025] KECA 572 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 572 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E004 OF 2025**

JW LESSIT, JA

MARCH 7, 2025

BETWEEN

PMW APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for Leave to file an appeal out of time from the
Judgment of the High Court at Muranga (C. S. Chebet, J.) delivered
on 31st May 2023 in HC Criminal Appeal No. E017 of 2022.)*

RULING

1. The Notice of Motion application is undated. However, in the applicant's submissions, he states that the same was filed on 13th January 2025. It is brought under rule 4 of the *Court of Appeal Rules* and seeks leave to file an appeal out of time against the judgment of the first appellate court in High Court Criminal Appeal No E017 of 2022.
2. The applicant has urged that he was not able to file his appeal in time and has explained that his relatives had promised to get him an advocate but were unable due to financial constraints.
3. I have seen a hearing notice dated 12th February 2025 at 12:53 p.m. to nyeriodpp@go.ke showing that the office of the DPP 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 written submissions in which he reiterates what is stated on the face of the application, and which I do not wish to repeat.



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 Chebet, J. on the 31st May 2023. This application was filed on 13th January 2025. The delay involved is therefore one year and seven 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 for the delay, stating that he was waiting for his relatives to hire an advocate for him. He says that he is held in prison custody and unable to help himself. He seeks to have fees for the application waived.

9. I am 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.

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 January 13, 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 7TH DAY OF MARCH, 2025.

J. LESIIT

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

