



REPUBLIC OF KENYA



KENYA LAW
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**Githinji v Republic (Criminal Application E005 of 2023)
[2025] KECA 1250 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1250 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E005 OF 2023**

A ALI-ARONI, JA

JUNE 27, 2025

[IN CHAMBERS]

BETWEEN

PETER NJOGU GITHINJI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application by way of a notice of motion seeking an extension
of time to file an appeal out of time in HCCRA No. E46 of 2022)*

RULING

1. Before the court is an undated application by way of a notice of motion seeking an extension of time to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application supported by the affidavit of the appellant in which he deposes that he was charged with defilement in Criminal Case No. 12 of 2019 at Karatina Law Courts; he filed an appeal being HCCRA No. E046 of 2022, at the Nyeri High Court; aggrieved by the outcome of the first appeal, he has not been able to file an appeal to this Court; he is yet to be supplied with a copy of the court's record; his relatives had promised to hire an advocate to represent him and follow up on the court's record but this was not possible.
3. The applicant now makes this application, seeking to be allowed to appeal out of time as a pauper, and for the annexed memorandum of appeal be considered as his petition of appeal and be processed accordingly.
4. The State has not filed a response, and neither party has filed written submissions.
5. I have considered the application and the affidavit. The issue to be determined is whether the applicant is entitled to 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 *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 beginning point is that the respondent has not opposed the application. Secondly, I find the explanation given by the applicant to be satisfactory, and based on the draft grounds of appeal, the appeal does not appear frivolous.
7. Consequently, the application is hereby allowed.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF JUNE, 2025.

ALI-ARONI

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JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR

