



REPUBLIC OF KENYA



KENYA LAW
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**Waithaka v Republic (Criminal Application E039 of 2025)
[2025] KECA 1412 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1412 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E039 OF 2025
S OLE KANTAI, JA
JULY 31, 2025**

BETWEEN

STANLEY NGUGI WAITHAKA APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for extension of time for leave out of time against the
Judgment of the High Court of Kenya at Muranga (S.C. Chirchir,
J.) delivered on 29th March, 2023 in H.C. CRA No. 38 of 2019)*

RULING

1. The applicant, Stanley Ngugi Waithaka has applied by motion for leave to appeal out of time. He says that he was convicted and sentenced imprisonment for life after which he appealed to the High Court of Kenya, Muranga in Criminal Appeal No. 38 of 2019 which appeal was dismissed on 29th March, 2023 by Chirchir, J. He says that after that he appealed to this Court while he was an inmate at Muranga Prison but he was thereafter transferred to Nyeri Prison only to find that his appeal had not been allocated an appeal number; that:

"That, I am a convict, I do not have an advocate, I am a poor man and my appeal has a high chance of success if heard and determined. It is for that reason I humbly beg the court to allow me to appeal out of time."

2. He has attached a copy of the impugned judgment.
3. I have seen written submissions by the respondent which office states that it is not opposing the application.



4. The principles that govern an application for extension of time were set out in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 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 stated 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."

5. The applicant says that after his first appeal was dismissed he filed an appeal to this Court but the same was not allocated an appeal number; that he was then transferred from one prison to the other which action may have led to him, a convict, not following up on the appeal which he thought he had filed. I find this to be a reasonable explanation for delay. The respondent, which is not opposing the application, will not be prejudiced in any way if I exercise discretion in favour of the applicant.
6. I allow the Motion. Let the applicant file Notice of Appeal within seven (7) days of today and record of appeal within twenty- one (21) days thereafter.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

