



REPUBLIC OF KENYA



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

**Mwiti v Republic (Criminal Application E110 of 2024)  
[2024] KECA 1369 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1369 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPLICATION E110 OF 2024  
S OLE KANTAI, JA  
OCTOBER 3, 2024**

**BETWEEN**

**JOSEPHAT MWITI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against both conviction and sentence of the High Court of Meru (Lesiit & Kasango, JJ.) delivered on 29th July, 2021 in H. C. CR. A. No. 72 of 2007.)*

**RULING**

1. The applicant, Josphat Mwiti, in the homegrown motion on notice prays in the main that he be allowed to file an appeal out of time and that time be extended for him to appeal. He says that his first appeal was dismissed in Meru HCCRA No. 72 of 2007.
2. He says in a supporting affidavit that he was charged with the offence of robbery with violence in Meru Chief Magistrates Criminal Case No. 565 of 2016. He appealed against the judgment of that court but his appeal was dismissed by the High Court of Kenya at Meru. He says:  

That, I could not appeal on time because I was not given my High Court judgment to enable me appeal on time.”
3. He begs leave of court for extension of time to appeal to this Court. He has annexed a notice of appeal and a draft memorandum of appeal which sets out six grounds of appeal.
4. I have seen written submissions by the respondent where it is stated in the material part that the applicant has not advanced any plausible reason for delay in filing the present application and also in filing a notice of appeal.



5. The respondent states:

However, in the interests of justice and cognizant of the provisions of Article 159 (2) of the Constitution, we are not opposed to the appellant’s application as prayed.”

6. The principles that apply in an application for extension of time are well settled and were set out in the oft cited case of *Leo Sila Mutiso v 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.”

7. I do not have sufficient material as presented to know when the judgment of the High Court was delivered as the year given in the notice of appeal and in motion and elsewhere “29<sup>th</sup> day of July, 20210” is misleading. The notice of appeal itself is dated at Nyeri on 2<sup>nd</sup> July, 2024, as are the other documents forming part of this application.

8. I note that the respondent does not oppose the application. I note also that the applicant was convicted for a serious offence where he was sentenced to death and his appeal to the High Court was dismissed. I am prepared in the circumstances to grant him leave to appeal to this Court. I allow the motion. Let the applicant file appeal within twenty-one (21) days of today.

**DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2024.**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

