



**Matayo v Republic (Criminal Application E007 of 2021)  
[2023] KECA 398 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KECA 398 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E007 OF 2021  
MSA MAKHANDIA, JA  
MARCH 31, 2023**

**BETWEEN**

**ESTHER MATAYO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to file an appeal out of time  
against the judgment of the High Court of Kenya at Kajiado  
(Mwita, J.) dated 21st February, 2020 in HCCRA No. 27 of 2019)*

**RULING**

1. In the application dated February 11, 2021, the applicant sought before this court extension of time within which to file her memorandum of appeal against the decision of Mwita, J dated February 21, 2020. The same is based on the grounds that immediately after the judgment was delivered, the advocate who was representing her withdrew his services, hence, she was unable to get advice on how to appeal, and further, the advent of covid-19 pandemic frustrated her efforts of appealing.
2. The respondent *vide* letter dated March 13, 2023, indicated that it was not opposed to the applicant being granted the leave sought.
3. Rule 4 of the [Court of Appeal Rules](#) gives this court the discretion to extend the time limited by the rules for the doing of 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”

4. In the present case, the judgment that the applicant seeks to appeal against was delivered on February 21, 2020. The present application was filed on February 11, 2021. There was thus a delay of nearly a year in filing the notice of appeal.
5. The applicant has averred that she was incarcerated, and that there were restrictions relating to the covid-19 pandemic which made it difficult for her to file her appeal in time, and further, that her advocate on record ceased from representing her immediately the judgment was delivered.
6. Having considered the application and the reasons advanced for failing to file the appeal in time. I am satisfied by the reasons advanced by the applicant for the delay in filing the notice of appeal in time. As the respondent does not oppose the application and indeed supports it tacitly, I hereby allow the application dated February 11, 2021.
7. The notice of appeal dated February 11, 2021 shall be deemed as duly filed. The memorandum of appeal and the record thereof shall be filed within 30 days from the date hereof.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH, 2023.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

*I certify that this is a True copy of the original*

*Signed*

**DEPUTY REGISTRAR**

