



**Matanda v Republic (Criminal Application E120 of 2024)
[2025] KECA 2325 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2325 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E120 OF 2024
HA OMONDI, JA
DECEMBER 19, 2025**

BETWEEN

WYCLIFFE WAFULA MATANDA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application seeking leave to appeal out of time against the judgment of the High Court of Kenya at Bungoma (Muchemi, J.) dated 7th July 2014 in HCCRA No. 76 of 2011)

RULING

1. The applicant, Wycliffe Wafula Matanda, was charged of the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was tried, convicted and sentenced to serve 30 years imprisonment by the magistrate’s court in Webuye. Aggrieved, he moved to the High Court on appeal vide HCCRA No.76 of 2011 which was dismissed in entirety (Muchemi, J.) on 7th day of July 2011. He however failed to file his appeal within the 14 days after delivery of judgment; but remains desirous of appealing to this Court.
2. In that regard, the applicant filed this application dated 6th January 2025 seeking leave for extension of time to file appeal out of time. The application is premised on the grounds that the applicant was not served with the proceedings and Judgment of the High Court on time, to enable him prepare and file his appeal.
3. The appellant has not set out any reasons that caused the delay. I also take note that there is no response or written submissions filed by the respondent.
4. This Court’s unfettered discretion is provided under rule 4 of the Court of Appeal Rules as follows:
The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by



these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

5. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 which is the locus classicus, laid down the parameters 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. What are the circumstances leading to the delay? None has been disclosed. As a matter of fact, the application has not even been prosecuted as the applicant has not even bothered to file written submissions. I find no basis upon which to favourably exercise my discretion, and the application is dismissed for lack of merit.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF DECEMBER, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

