



**Okemo v Prosecutions (Criminal Appeal E001 of 2024)
[2024] KEHC 9678 (KLR) (Crim) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E001 OF 2024
K KIMONDO, J
JULY 31, 2024**

BETWEEN

CHRYSANTHUS BARNABAS OKEMO APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. The old adage goes that once bitten twice shy. But not so for the Director of Public Prosecutions (hereafter the DPP or the applicant).
2. On 30th November 2022, the lower court dismissed the DPP's request to extradite the respondent to Jersey. Those proceedings were in the Chief Magistrates Court at Nairobi in Miscellaneous Application No. 9 of 2011 *DPP v Samuel K Gichuru & Chrysanthus B. Okemo*.
3. The DPP however failed to lodge his appeal within 14 days as ordered by the lower court. On 20th December 2023, I was gracious and granted him leave to appeal out of time. There was a mandatory condition in the following terms-
 - a. That leave be and is hereby granted to the applicant to lodge an appeal out of time. The petition of appeal must be formally filed and served upon the respondent within 14 days of today's date.
 - b. That in default, the leave granted shall automatically abate.
4. So, I would have expected the DPP, who had annexed a draft petition of appeal to his earlier application, to lodge this appeal timeously. He did not do so within the 14 days' window. So now, the applicant in a notice of motion dated 10th January 2024 prays that the petition of appeal filed on 4th January 2024 be struck out.



5. The response by the DPP is ingenious: Learned Principal Prosecution Counsel, Mr. Owiti, argued that in calculating the 14 days, the last day does not count; and, that accordingly the appeal was in time. Keep in mind that the DPP was not seeking any extension of time.
6. My take is this. Whenever time is computed, it excludes the day on which the event happens or the act or thing is done. That is express in section 57 of the *Interpretation and General Provisions Act*. The same language is employed in Article 259 (5) of the *Constitution*.
7. Quite clearly, if the 14 days were absolute days, the only day to be excluded was the date of the order or ruling, not the 14th day of the event. This is the proper reading of section 349 of the Criminal Procedure Code.
8. However, the 14 days fell within the Christmas Recess of the High Court with a number of public holidays in between. Time thus stopped running on some of those days. But even if I be wrong on that aspect, the appeal was lodged on the 15th day. But like I pointed out, the DPP has not sought for extension of time.
9. Granted all those reasons and the nature of the appeal, I decline to strike out the appeal. The upshot being that the notice of motion by the applicant dated 10th January 2024 is hereby dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

Mr. Mungla for the applicant instructed by Paul Mungla & Company Advocates.

Mr. Owiti for the appellants/respondent instructed by the office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

