



**Biwott v Republic (Miscellaneous Application 105 of 2016)  
[2024] KEHC 10373 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10373 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION 105 OF 2016  
RN NYAKUNDI, J  
AUGUST 23, 2024**

**BETWEEN**

**NATHAN KIPKOECH BIWOTT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is a notice of motion application dated 16<sup>th</sup> November, 2016 seeking leave to appeal out of time. In support of the application, the applicant enumerates the following grounds:
  - a. That I was charged convicted and sentenced to serve 21 years of the offence of housebreaking & stealing c/sec 304(1)(b)
  - b. That upon conviction and sentence I was informed of my right to appeal within 14 days as required by the law.
  - c. That I did not appeal because I was not issued with the judgment of the trial court.
  - d. That I was promised by my relatives that they are going to hire for me an advocate, but they have not because they have failed to secure the required fees to pay the lawyer.
  - e. That, I may the honorable court grant me an opportunity to appeal out of time as it is my right to appeal.

**The Law.**

2. The starting point is section 349 of the Criminal Procedure Code which states that-
 

“ An appeal shall be entered within fourteen days of the date of the order or sentence appealed against. Provided that the court to which the appeal is made may for good cause admit an



appeal after the periods of fourteen has elapsed and shall so admit on appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against and a copy of the record within a reasonable time of applying to the court there from.”

3. I have considered the instant application through the lens of the foregoing provisions of Section 349 of the CPC on limitation of time of appeal. The applicant stated that judgment was delivered but he was not given a copy to enable him mount an appeal. He equally deponed that he has not been able to procure the services of an advocate, which he had been promised by his relatives. For these reasons, it was the applicant’s position that he should be granted leave to file an appeal.
4. In the case of *Salat v Independent Electoral & Boundaries Commission & 7 Others* [2014] KLR – SCK, the Supreme Court set out the principles to be considered by court in exercising the discretion to extend time for filing an appeal as follows: -
  - (1) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
  - (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.
  - (3) Whether the Court ought to exercise the discretion to extend time is a consideration to be made on a case-to-case basis.
  - (4) Whether there is a reasonable reason for the delay which ought to be explained to the satisfaction of the Court.
  - (5) Whether there would be any prejudice suffered by the respondents if the extension was granted.
  - (6) Whether the application had been brought without undue delay and finally whether in certain cases like election petitions public interest ought to be a consideration for extending time.
5. Having considered the reasons advanced by the Petitioner and the circumstances of the instant case, particularly for reasons that the applicant did not have the advantage of legal representation, I find it just to grant leave to appeal out of time.
6. Notwithstanding, the basis laid by the Applicant in support of the delay and the length of time taken to file his appeal, from a better understanding on the criminal legal process indigent applicant’s grievances are mainly hinged on the violation of Article 35 on the right of access Information held by the state and the right to a fair hearing in Article 50 (5)(b) of *the Constitution*.
7. For purposes of clarity, Article 35 provides that everyone has the right to access of any information held by the state and information held by another person and required for the exercise or protection of any right or fundamental freedom. Similarly, in Article 50 (5)(b) of *the Constitution*, an Accused person has the right to a copy of the record of the proceedings within a reasonable period after they are concluded, in return for a reasonable fee as prescribed by the law.
8. It cannot be gainsaid that to give effect to these founding rights, the public must have access to a copy of record held by the judiciary at the conclusion of every trial within a reasonable time. A part from this, Article 10 of *the Constitution* provides as follows: that the national values and principles of governance in this article binds all state organs, state officers, public officers and all persons whenever any of them applies and interprets this constitution makes or implements public policy decisions. This country from the promulgation of *the Constitution* 2010 is founded on good governance, integrity, transparency, accountability, responsiveness, protection of the marginalised, human rights, equality



which fosters timely accessible and expeditious information for the realization of the rights of the accused persons in this case. A litigant or an Applicant must be given access to the record of a public body like the judiciary to pursue his right of appeal or review on conviction or sentence. These are the issues bedeviling literally the processing of appeals within the timeline of 14 days in the Criminal Procedure Code.

9. The end result is that the application dated 16<sup>th</sup> November, 2016 is allowed.
10. To this end, the applicant shall be required to file an appeal within a period of thirty days.
11. The Deputy Registrar shall facilitate the procurement of proceedings for the applicant to comply.
12. In order to track the progress in this matter, a state conference shall be held on 16<sup>th</sup> September, 2024 before the Deputy Registrar.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF AUGUST, 2024**

**R. NYAKUNDI**

**JUDGE**

