



**Oberi v Republic (Criminal Appeal E152 of 2022)
[2023] KEHC 475 (KLR) (Crim) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E152 OF 2022
DO OGEMBO, J
JANUARY 31, 2023**

BETWEEN

ALFRED OMBUNDU OBERI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Alfred Ombundu Oberi, has moved this court by way of a notice of motion application dated August 31, 2022. The application seeks that this court be pleased to grant leave to the applicant to file an appeal out of time. The same is supported by an affidavit of the applicant sworn on even date. The applicant has submitted that upon being convicted and sentenced to serve 2 years' imprisonment on February 1, 2019 (in Chief Magistrate's Court Criminal Case No 6414 of 2013), he filed an appeal, being HCCRA No 24 of 2019, but that while in prison, he was never brought to court for the hearing of his appeal. That it was not until February 16, 2022, that he learnt that his appeal had been dismissed for want of prosecution. That his application seeking reinstatement of his appeal was disallowed by the court.
2. The applicant has relied on the case of [Andrew Kiplangat Chemaringo Versus Paul Kipkorir Kibet \(2018\)eKLR](#), wherein it was held;-

' The law does not set out any minimum and maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable.'



3. The appellant also submitted on the right to fair trial including the right of appeal under article 50(2) (Q). And the cases of *Juldesa Tuke Dabelo Versus IEBC & Another (2015)eKLR*, *Raila Odinga and 5 others Versus IEBC and 3 others (2013)eKLR*, *Lemanken Arata Versus Harun Meita Mei Lempaka & 2 others*, and *Patricia Cherotich Saw Versus IEBC and 4 Others (2015)eKLR*, that the court should not allow the prescriptions of procedure and form to trump the primary objective of dispensing justice.
4. The respondent has opposed this application. That the applicant filed 2 separate applications for re-instatement, both of which were dismissed by the court. That this application is an abuse of the process of the court since it is the applicant who failed to prosecute his appeal leading to its dismissal. The court was urged to dismiss this application.
5. I have considered this application and the submissions made on it by the 2 protagonists. I have also carefully considered the circumstances of this case as already narrated above. The applicant had initially filed his appeal on time. He however never got the opportunity to prosecute the same. He has given the explanation that he had been in prison. Upon being released from prison, he made 2 unsuccessful attempts at having his appeal re-instated. These were applications for reinstatement of the dismissed appeal. At no time did he file any application for extension of time for filing an appeal.
6. Article 159(2)(d) of the *Constitution* enjoins this court to exercise justice without undue regard to technicalities. Indeed this is the ration in the cases referred to above by the applicant. I also agree that there is no time set for a party to file for an application for leave to file an appeal out of time (Andrew Kiplangat Chemarango Versus Paul Kipkorir Kibet (2018)eKLR).
7. Lastly, the right to pursue an appeal against a decision of the court is available to any aggrieved party. I therefor do not see any prejudice that the respondent would suffer should the applicant be granted leave to file the intended appeal out of time.
8. I accordingly therefore allow the applicant's application date August 31, 2022. The applicant granted leave to file the intended appeal out of time. The applicant to file the intended appeal with 15 days from today's date. Orders accordingly.

HON. DO OGEMBO

JUDGE

January 31, 2023.

Court:

Ruling read out in open court in the presence of the applicant, Ms Muhia for applicant and Ms Akunja for state.

DO OGEMBO

JUDGE

January 31, 2023.

