



REPUBLIC OF KENYA



KENYA LAW
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**Nyito v Republic (Criminal Appeal 84 of 2019)
[2023] KEHC 1539 (KLR) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL 84 OF 2019
RE ABURILI, J
FEBRUARY 21, 2023**

BETWEEN

WILLIAM MAJANJA NYITO APPELLANT

AND

REPUBLIC RESPONDENT

*(An Appeal against the conviction and sentence of Hon. R.M. Oanda Ag.
PM in Ukwala PM's Court in Cr. Case No. 164 of 2013 on 22/07/2014)*

RULING

1. The appeal was filed on 9/12/2019 and has been pending for a very long time because the lower court file could not be availed. At one time and for quite a while, the Registry was calling for the lower court file from Bondo Law Courts yet the trial took place at Ukwala PM's courts. And whereas Bondo Law Courts was responding and saying they did not have such a case file number, it took long before the Registry at the High Court realized its mistake.
2. The Petition/Memorandum of Appeal filed on 6/12/2019 is clear that the original case was from Ukwala vide Cr. 164/2013 yet the calling letters kept asking for Bondo Law Courts to avail to this court a non-existent file.
3. There is need for keenness on the part of the Registry staff to ensure that they read the court which originated the case to avoid misplaced calling letters as the one dated 11/8/2020 purporting to remind Bondo PM's court to avail a file which was not in their custody. A similar letter was sent on 27/5/2021 and despite the return comments on the latter letter, again followed by a letter of 13/7/2021, received on 16/7/2021, it took the Registry four months to 10/11/2021 to write a request called 1st reminder to Ukwala Law Courts. On the part of Ukwala Law Courts, they never responded to the 3 reminders until this court had to issue summons to the Court Administrator to appear in a civil matter, before this file was eventually brought on 17/2/2023.



4. Having said the above and calling upon the Registry staff and Court Administrators to be more vigilant in their work, I observe that the judgment in the lower court was delivered and sentence passed on 13/11/2014.
5. This appeal was filed on 9/12/2014.
6. There is no indication that leave to appeal out of time (after lapse of 14 days) was ever sought and granted to the convict applicant.
7. In the absence of an order or ruling for leave to appeal out of time, I find this appeal to be fatally incompetent and incapable of being admitted to hearing.
8. The jurisdiction of this court can only be invoked or exercised in matters which are live and not stale.
9. Accordingly, I find this appeal incompetent. It is hereby struck out.
10. The file is closed.
11. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 21ST DAY OF FEBRUARY, 2023

R.E. ABURILI

JUDGE

