



**Yamah v Republic (Miscellaneous Criminal Application
160 of 2014) [2023] KEHC 2827 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION 160 OF 2014
RN NYAKUNDI, J
MARCH 31, 2023**

BETWEEN

MOSES YAMAH APPLICANT

AND

REPUBLIC RESPONDENT

(An application for leave to appeal out of the he decision of Hon GK Kimondo in Eldoret High Court Cr Case No 175 of 2010.delivered on the 23rd day of October, 2013)

RULING

Coram: Before Hon. Justice R. Nyakundi

Mugun for the State

Background

1. The Applicant herein, the accused person, made an application by Notice of Motion dated the December 16, 2014 seeking leave to appeal out of time. The intended appeal emanates from the decision of Hon GK Kimondo in Eldoret High Court Cr Case No 175 of 2010 delivered on the 23rd day of October, 2013; in which, the applicant’s conviction by the lower court was upheld.
2. The applicant swore a Supporting Affidavit annexed to the application urging that he may be granted leave by this court to file a second appeal to the court of appeal. He stated that because of inevitable reasons, he did not appeal to the court of appeal within the required 14 days.

Issue for determination

4. Before the question of leave to file appeal may arise, I find it important to ascertain whether it is within this court’s purview to entertain applications of this nature.



Determination

Power to extend time for appeal

3. The starting point would be Article 164(3) of the Constitution which stipulates:

The Court of Appeal has jurisdiction to hear appeals from—

- a) the High Court; and
- b) any other court or tribunal as prescribed by an Act of Parliament.”

5. The time for filing an appeal and the power to extension of time for appeal is provided for under section 349 of the Criminal Procedure Code as follows:

349. 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 period of fourteen days has elapsed, and shall so admit an 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 therefore.”

6. It is of significance that the Supreme Court cited with approval the decision of the Supreme Court of Nigeria in *Ocheja Emmanuel Dangana v Hon Attai Aidoko Alo Usman & others* SC 480/2011 and SC 11/2012 (Consolidated), where it was stated:

A court is competent, that is to say, it has jurisdiction when-

1. It is properly constituted ...and
2. the subject matter of the case is within its jurisdiction and no feature in the case..prevents the court from exercising its jurisdiction; and
3. the case comes before the court initiated by the due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction”.

7. Given the above authoritative statement of the Supreme Court, it then goes without saying that the present application ought to be determined by the court of appeal which has jurisdiction to grant the orders sought. This is particularly so because applications of this nature are heard by the court to which the appeal is made. The applicant then is at liberty to file an application before the Court of Appeal seeking leave to file the appeal out of time. The reopening of sentence hearing under Article 6 (a) &(b) of the Constitution is not tenable for lack of new and compelling evidence from the motion filed by the Applicant.

8. For the forgoing reasons the application for enlargement of time to file appeal is misconceived and is hereby struck out for being improperly before this court.

DATED AND SIGNED AT ELDORET THIS 31ST DAY OF MARCH, 2023

.....

R. NYAKUNDI



JUDGE

In the presence of

Mr. Mugun for the State

Appellant Present

