



**Director of Public Prosecutions v Muchuki & 5 others (Criminal Application
E068 of 2022) [2023] KEHC 3013 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPLICATION E068 OF 2022
TW CHERERE, J
MARCH 30, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND

PAULO MUCHUKI & 5 OTHERS RESPONDENT

RULING

Background

1. On July 4, 2022, Respondents were arraigned in court joint charged with stock theft contrary to section 278 of the [Penal Code](#) and handling stolen stock contrary to section 322 (1) and (2) of the [Penal Code](#) Cap 63 Laws of Kenya.
2. On August 24, 2022, the hearing was adjourned on the ground that the prosecution had not diarized the case.
3. On August 30, 2022 the prosecution applied to withdraw the case under section 87 (a) of the [Criminal Procedure Code](#) on the ground that there was no witness in court.
4. The record shows that the learned trial magistrate dismissed the application for withdrawal and acquitted the 5 respondents under section 202 of the [Criminal Procedure Code](#).
5. Applicant seeks leave to appeal the acquittal on the ground that it is dissatisfied with the order and was unable to get proceedings in good time to appeal.
6. Mr. Kaberia opposed the application on the application on the ground that the delay in filing the appeal has not been explained.
7. Both the refusal to withdraw the suit and to acquit Respondents are matter of the court's discretionary power that must be exercised judiciously.



8. Whereas it is indeed correct that this application was filed on December 20, 2022 which is four months after the impugned order, it should be the court's last resort to deny a party a chance to be heard on merit.
9. In any case, the door of justice is not closed because a mistake has been made by a person of experience who ought to have known better as the Applicant in this case ought to have known.
10. It has not been demonstrated that the appeal will occasion the Respondents any prejudice. Consequently, I find that the interest of justice is in favour of granting the Applicant leave to appeal out of time.
11. In the end, the application dated December 20, 2022 is allowed in the following terms:
 - i. Applicant is granted leave to appeal out of time, the order issued on August 30, 2022 acquitting the 5 respondents under section 202 of the *Criminal Procedure Code*
 - ii. The memorandum of appeal shall be filed and served within 14 days from today's date
 - iii. Mention on April 26, 2023 to confirm compliance and for further orders

DATED IN MERU THIS 30th DAY OF March 2023

T.W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Ms. Rita (PPC)

For Respondent - Mr. Kaberia for Kaibunga Kaberia & Co. Advocates

