



**Republic v Muriuki (Miscellaneous Criminal Application
E019 of 2022) [2023] KEHC 17404 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 17404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CRIMINAL APPLICATION E019 OF 2022**

**RM MWONGO, J
MARCH 29, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

JOSEPH KARIMI MURIUKI RESPONDENT

RULING

1. The state filed this application seeking to extend time to file their appeal. It is premised under Section 348 A and 349 of the *Criminal Procedure Code*. The reason given is that there was delay in obtaining certified copies of proceedings from the Chief Magistrate’s Court.
2. The DPP, for the applicant states that he requested the typed court proceedings on or about April 7, 2022; he adds that the proceedings and judgment were not availed within 14 days of the judgment. Hence the inability of the applicant to lodge the appeal on time.
3. In his supporting affidavit filed on July 10, 2022 the DPP states at paragraph 6 that he wrote a letter to the Chief Magistrate on or about April 7, 2022 to request typed proceedings following the judgment of the lower court on April 6, 2022.
He says that he annexed a copy of the certificate of delay as Annex A. That annex is, however, not attached, and I have not seen it anywhere else in the file.
4. Further in paragraph 8 of the supporting affidavit counsel has annexed a copy of the petition appeal “marked B”. He adds that he obtained copies of the judgment and proceedings presumably around the time he was swearing the affidavit.
5. The respondent opposed the application through a 23 paragraph Replying Affidavit. The key reasons are: That the office of DPP is a state organ that can easily obtain typed proceedings; That the judgment



was delivered on 6th April; 2022; that he opposes the application. The majority of the respondent's other responses go into the merit of the appeal and are irrelevant to the application.

6. Parties filed written submissions to dispose of the application. The applicant restated his grounds and cited Section 349 of the *Criminal Procedure Code*. He added that the court should take into consideration Article 59 (2) (d) that the court should not administer justice without undue regard to procedural technicalities.
7. Other than reiterating his opposition to the application, the Respondent's submissions were off the mark and did not add impetus to the substance of the application.

Legal Analysis and Determination

8. Section 349 of the *Criminal Procedure Code* is the provision relevant to appeals out of time. It provides as follows:

“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 therefor”. (Emphasis added)

9. The proviso to Section 349 requires that where an appeal is filed late it cannot be admitted unless the court is satisfied that the failure to file on time was occasioned by the appellant's inability to obtain the judgment, order court or proceedings within a reasonable time.
10. Where an application to file an appeal out of time is premised on Section 349 *Criminal Procedure Code* and its proviso, the court's satisfaction will be achieved if the applicant shows and demonstrates:
 - that he has sent a letter to the court for copies of the decree order or record; or
 - that the letter was sent within the fourteen day period for filing the appeal; and
 - that there is correspondence from the court appealed from evincing the delay; or
 - that the applicant has obtained a certificate of delay from the court appealed from.
11. Without any of these documents being availed, the court cannot be satisfied as to the reasons for delay. The proviso is worded in mandatory terms; that it “shall so admit and appeal if it is satisfied”.
12. In the present case, the applicant has not exhibited any of the aforesaid items. To that extent, the court cannot be satisfied as to the inability of the appellant to obtain a copy of the judgment order or decree appealed from.
13. Accordingly, applicant's application fails for failure to satisfy the court as to the reasons for the late filing. The appeal is therefore dismissed.
14. Orders accordingly.

DELIVERED AT KERUGOYA THIS 29TH DAY OF MARCH, 2023

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R MWONGO

JUDGE

Delivered in the presence of:

1. Mr. Mamba for the Applicant
2. Joseph Karimi Muriuki in person
3. Mr. Murage, Court Assistant

