



**Kimutai v Republic (Miscellaneous Criminal Application
E127 of 2022) [2023] KEHC 3083 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E127 OF 2022**

**RE ABURILI, J
MARCH 28, 2023**

BETWEEN

BRIAN KIBET KIMUTAI ALIAS COSMAS OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Brian Kibet Kimutai alias Cosmas Ochieng is a convict in Maseno Senior Principal Magistrate's Court Criminal Case No E352 of 2022. He claims that he was convicted on October 5, 2022 but that he was unable to file an appeal in time because he had no money and seeks leave of this court to file an appeal out of time yet he was sentenced to serve nine (9) years imprisonment for impersonation.
2. I have considered the application dated December 13, 2022. The prosecution will in no way be prejudiced if leave to appeal out of time is granted as the delay is not inordinate.
3. I allow the application dated November 8, 2022 and filed in court on December 13, 2022.
4. I grant the Applicant herein Brian Kibet Kimutai alias Cosmas Ochieng leave to file an appeal out of time from conviction in Maseno Senior Principal Magistrate's court Criminal Case No E352 of 2022.
5. The Petition of appeal to be filed and served within fourteen (14) days of today.
6. Applicant to be notified of this order.
7. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF MARCH, 2023

R. E. ABURILI

JUDGE

