



**Ogusi v Republic (Miscellaneous Criminal Application E048 of 2023)
[2023] KEHC 24408 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E048 OF 2023
RE ABURILI, J
OCTOBER 27, 2023**

BETWEEN

ROLEX OTIENO OGUSI APPLICANT

AND

REPUBLIC RESPONDENT

*(Arising from the original conviction and sentence in Principal
Magistrate's Court Criminal Case No 52 of 2017 at Nyando)*

RULING

1. The Applicant is a convict vide Winam SPM Criminal Case No. 52 of 2017 vide Sexual Offences Case.
2. He was sentenced to serve twenty (20) years imprisonment on 13th October 2022. He claims that he filed an application for leave to appeal out of time but that he never received any response on the same.
3. It is now over one year since the applicant was convicted.
4. The delay in filing this application is inordinate and no explanation has been given for the delay. I find that justice will not be served if the convict is given the opportunity to file an appeal after such a long period of time when, in most cases case files are not even available and in the past, this court has had to order for retrials of convicted persons in vain.
5. This court does not believe that the applicant filed an application to appeal out of time and that he never received any response.
6. Furthermore, there is no reason why the applicant did not file an appeal after his conviction yet he is serving prison term in a very active prison where convicts are assisted to file documents in court the moment they reach prison.
7. I find the applicant to be lying to this court and the delay which is unexplained is too inordinate.



8. I reject the application dated 30th August 2023 and dismiss it for having been filed with inordinate delay without any explanation why the appeal was not filed within 14 days of the date of conviction and sentence, in the first instance.

9. File closed. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 27TH DAY OF OCTOBER, 2023

R. E. ABURILI

JUDGE

