



**Monka & 2 others v Republic (Criminal Miscellaneous Application
E071 of 2021) [2022] KEHC 10352 (KLR) (23 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 10352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL MISCELLANEOUS APPLICATION E071 OF 2021
SN MUTUKU, J
MARCH 23, 2022**

BETWEEN

MICHAEL MONKA 1ST APPELLANT

ALFRED KOILEKEN 2ND APPELLANT

VINCENT SAYIORIOLE 3RD APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellants intend to file an appeal against the conviction and sentence by the trial court. They are seeking leave to appeal out of time and to be released on bond pending the determination of the appeal. They attribute the delay in filing the appeal within time to failure to receive proceedings from the lower court.
2. In the brief submissions made in court by Mr. Nairi, learned counsel on behalf of the three Applicants, this court was told that the delay in filing the appeal within time is not inordinate and that it was caused by failure to receive proceedings from the lower court. It was submitted that the appeal is arguable because the sentence is harsh and excessive.
3. The application was opposed by the prosecution. Mr. Mang'are, learned prosecutor submitted that the appellants have not explained the delay in filing the appeal within time and that the appeal does not have chances of success. This court was urged to decline granting the application.
4. 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 therefor.”

5. I have considered this matter and I am satisfied that failure to file the appeal within time was occasioned by delay in obtaining copies of proceedings from the lower court in time. Consequently, I hereby grant the following orders:

1. The Applicants are hereby granted leave to file appeal out of time.
2. A record of appeal be filed and served on the ODPP within the next 21 days.
3. Upon service the ODPP shall have 14 days to file and serve the response.
4. The prayer for bond pending the appeal is declined.

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 23RD MARCH 2022.

S. N. MUTUKU

JUDGE

