



REPUBLIC OF KENYA



KENYA LAW
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JK v Republic (Criminal Petition 3 of 2019) [2022] KEHC 11284 (KLR) (30 May 2022) (Ruling)

Neutral citation: [2022] KEHC 11284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL PETITION 3 OF 2019**

F GIKONYO, J

MAY 30, 2022

BETWEEN

JK APPELLANT

AND

REPUBLIC RESPONDENT

*(From Original Conviction/Sentence in Criminal Case No.
593 Of 2010 Of the Chief Magistrate's Court at Narok)*

RULING

1. Before me is an application dated 24/6/2019 seeking for three significant orders, namely: -
 - i. That this petition be heard on priority basis as the petitioner's right to appeal has been violated;
 - ii. That the registrar be compelled to provide records of appeal for the petitioner; and
 - iii. That the petitioner's conviction and sentence be quashed and set aside.
2. The petition is expressed to be brought pursuant to Articles 50 (2) (q), 23, 27, 165, 159 of *the Constitution*, Section 349 of the *C.P.C.*, and supported by the case of *Danson Maina Muchoki V Republic* [2013 eKLR].
3. The major grounds cited by the applicant are: -
 - i. That he has been discriminated against by the resident magistrate in S.O.A no. 593 of 2010;
 - ii. That the appeal should not be left pending indefinitely- his appeal has delayed since he lodged it in 2010- there has never been any progress of the matter; yet,



he has been held in custody for inordinately prolonged period without hearing his appeal.

4. The applicant claims immediate released on the basis of Article 23(3) of *the constitution* which provides for relief where there is violation of fundamental rights and freedoms or any other orders this court shall deem fit.
5. Note of worth is that, the applicant claims that he filed his appeal in Nakuru and was brought to Narok. He also claimed he filed application no. e018 of 2018 whereby he was seeking to appeal out of time but this court dismissed it. He stated that he was convicted in 2011. He filed his appeal in 2011 and has been waiting for it.

Analysis and Determination

6. I have perused the documents the applicant herein has supplied to this court which were commissioned by the senior principal magistrate at Naivasha dated 28th June 2011. I have noted that the applicant was seeking to appeal out of time. However, the documents do not provide information on the outcome of the said application. It does not bear the courts stamp or anything to show that it was ever filed before the High Court at Nakuru or Naivasha. The grounds set out in the supporting affidavit provided is that the applicant's relatives had promised to appeal on his behalf but failed due to poverty and illiteracy.
7. Although the applicant claims that he filed appeal at Nakuru, he has not provided the court with details of his appeal at Nakuru so as to trace the appeal file for our action. Without proper information, the court finds itself in a dilemma. Previous efforts by the Deputy Registrar of the High Court to trace the lower court's record as well as the alleged appeal file has been fruitless.
8. I have, nonetheless, expended extra effort; I have perused the original register, and the information recorded in respect of this matter is that; the applicant was charged with the offence of incest by a male in violation of Section 20(1) of the Sexual Offences Acts No. 3 of 2006. Judgment was delivered on 27/5/2011. The accused now the applicant was sentenced to life imprisonment.
9. The court will need proper information and details from the applicant on his appeal at Nakuru. Otherwise, it is difficult to deal with this matter in a substantive manner. The substantive prayers in the Petition are, therefore, deferred, to be determined upon receipt of information as per the orders below.
10. In the circumstances I make the following orders to enable this court make an informed decision: -
 - i. The applicant shall, within 14 days, provide to the court in writing, details, information and outcome or status of: -
 - a. the application for leave to appeal out of time he allegedly filed at Naivasha; and
 - b. the court file number of the appeal he allegedly filed at Nakuru, and date of alleged filing thereof.
 - ii. The Prosecution counsel may, however, dig from their archive and provide any record from the police files and the DPP's file in respect of this case.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION. THIS 30TH DAY OF MAY, 2022

F. GIKONYO M

JUDGE

In the Presence of :



The Applicant

Ms. Torosi for Respondent

Mr. Kasaso

