



**Yegon v Republic (Miscellaneous Criminal Application  
E023 of 2022) [2022] KEHC 518 (KLR) (20 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 518 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CRIMINAL APPLICATION E023 OF 2022**

**AN ONGERI, J**

**MAY 20, 2022**

**BETWEEN**

**GILBERT CHERUIYOT YEGON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(It was an application for leave to appeal against the decision of Hon. M. Ngugi (Judge) delivered on the 27th day of February, 2019, in H.C.CR. APP. No.21 of 2017 at Kericho.)*

**RULING**

1. The Applicant herein Gilbert Cheruiyot Yegon is seeking leave to appeal to the Court of Appeal against the Appeal decision of Hon. M. Ngugi, Judge, (as she then was) which was delivered on 27/2/2019.
2. The Applicant filed an Application dated 15/3/2022 seeking the following Orders:-
  - (i) THAT this matter be certified as urgent and be heard at the first instance.
  - (ii) THAT the Honourable Court be pleased to order that, the same be given priority in hearing and determination.
  - (iii) THAT the Appeal is against the decision of Hon. M. Ngugi (Judge) delivered on the 27<sup>th</sup> day of February, 2019, in H.C.CR. APP. No.21 of 2017 at Kericho.
  - (iv) THAT the Court be pleased to allow the appeal to be filed out of time.
  - (v) THAT, due to his earlier intention to appeal, the Applicant is seeking leave of this Honourable Court for an extension of time to appeal out of time.
  - (vi) THAT, the Appellant prays to be present during the hearing of this application/appeal.
  - (vii) THAT, other grounds may be adduced during the hearing hereof.



3. The Application is supported by the Affidavit of the applicant dated 15/3/2022 which he has deposed as follows;
  - (i) THAT, he was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (3) of the *Sexual Offences Act* No. 3 of 2006.
  - (ii) THAT, he was convicted and sentenced to twenty (20) years imprisonment on the 7<sup>th</sup> day of June, 2017 in Criminal Case No. 82 of 2016 by Hon C. K. Mung'ania of Kericho CM Court.
  - (iii) THAT, the learned appellate judge erred in law by failing to find that the lower court sentenced the appellant to a sentence term that is not only harsh but also excessive in light of the facts and circumstances of the case.
4. The sole issue for determination in this application is whether or not this Court has the jurisdiction to grant leave to the applicant to file a second appeal to the Court of Appeal out of time.
5. The *Criminal Procedure Code* provides for second appeals section 361 stipulates that a party to an appeal from a subordinate court may, appeal against a decision of the High Court in its appellate jurisdiction on a matter of law.
6. The above mentioned section makes no reference to an aggrieved party having to seek leave to file a second appeal from the High Court prior to lodging the appeal at the Court of Appeal.
7. The role of the Court of Appeal as the second appellate court was succinctly set out in *Karani v R* [2010] 1 KLR 73 as follows; "This is a second appeal. By dint of the provisions of section 361 of the *Criminal Procedure Code*, we are enjoined to consider only matters of law. We cannot interfere with the decision of the superior court on facts unless it is demonstrated that the trial court and the first appellate court considered matters they ought not to have considered or that they failed to consider matters they should have considered or that looking at the evidence as a whole they were plainly wrong in their decision, in which case such omission or commission would be treated as matters of law."
8. I find that this court has no jurisdiction to grant leave to the Applicant to Appeal to the Court of Appeal.
9. The Applicant's first Appeal to the High Court having been dismissed on 27/2/2019, the Applicant should seek leave from the Court of Appeal to file his second Appeal to the said Court.
10. I accordingly dismiss the application dated 15/3/2022.
11. The Applicant has a right of appeal to the Court of Appeal against this ruling within 14 days of this date.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 20<sup>TH</sup> DAY OF MAY, 2022**

**A. N. ONGERI**

**JUDGE**

