



REPUBLIC OF KENYA



**Republic (DPP) v Mwashhi & 2 others (Miscellaneous Criminal Application  
E087 of 2021) [2022] KEHC 9962 (KLR) (27 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 9962 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CRIMINAL APPLICATION E087 OF 2021**

**PJO OTIENO, J**

**JUNE 27, 2022**

**BETWEEN**

**REPUBLIC (DPP) ..... APPLICANT**

**AND**

**EUGENE OKANDA MWASHI ..... 1<sup>ST</sup> RESPONDENT**

**GIDEON MISIGO IMBALI ..... 2<sup>ND</sup> RESPONDENT**

**AGNES AMBOKA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The trial court in Kakamega CMCR. Case No. 1303/2017 delivered a ruling dated 14.5.2020 and returned a verdict that the Prosecution had not established a *prima facie* to warrant the accused be put on their defence and therefore landed to the accused an acquittal.
2. The decision did not satisfy the prosecution who then initiated the current proceedings by a Notice of Motion dated October 21, 2021 seeking extension of time to file an appeal.
3. The reason put forth is that after the acquittal the complainant was displeased and requested the Directorate of public Prosecution to appeal. The directorate did bespoke proceedings and ruling for purposes of the appeal but the same were never supplied to the 25/8/2021. According to the Counsel who swore the Affidavit in Support of the application, he opines that the proceedings supplied disclosed formidable grounds of appeal disclosing high chances of success. The deponent then exhibited to court not only the proceedings and judgment but also draft grounds of appeal and the compliments letter dated 10.8.2021 requesting the directorate to peruse the proceedings and consider filing an appeal.



4. The application was resisted by the grounds of opposition asserting that there was no demonstration that the delay was not self-made as no demonstration was made on the steps taken to procure the proceedings and the delay for one year four (4) months was not explained.
5. On November 22, 2021, it was directed by the court that parties file and serve submissions but my perusal of the file reveal that only the respondents filed submissions. Indeed when Counsel appeared before the court on ... counsel for the applicant confirmed that they had not filed any submission and would thus rely on the Affidavit and one decision of the High Court to the effect that where delay is satisfactorily explained, the court would grant extension of time. The totality of the submissions by the applicant was that there was delay in supply of proceedings and ruling hence the delay with an emphasis that no prejudice would visit the respondents if time is extended.
6. For the respondents, the position taken was that there had been no demonstration in compliance with Section 349 of the Criminal Procedure Code because not even the letter requesting for proceedings had been exhibited just as much as no certificate of delay had been shown. To the respondents, the applicants only woke up when the complainant demanded an appeal and that the delay of sixteen (16) months had not been explained. The requirement of the law under Section 349 of the Criminal Procedure Code is that the applicant explains to the satisfaction of the court that he or his counsel was unable to get the proceedings and ruling sought to be appealed against within the fourteen (14) days window of presenting the appeal.
7. Here there is no dispute that the proceedings were only certified on the 25/8/2021 and the application presented on the 22/10/2021. The opposition by the respondents is that there was no copy of the letter by which the proceedings were sought. That may be a genuine concern but it doesn't negate on the fact that proceedings which could only be prepared and certified by the court, and not the applicant, were not ready till the 25/8/2021. My concern is however the missing explanation on why it took counsel a period in excess of fifty six (56) days to present the application. However in my considered view, that period may be long but for the need to access justice I don't find it inordinate. I also was never told of any prejudice and I do discern none against the respondents.
8. Consequently, I deem it in the interest of justice that time be extended by a period of seven (7) days to enable the applicant file and serve the petition of appeal.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 27<sup>TH</sup> DAY OF JUNE 2022.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

..... for the Applicant

..... for the Respondents

Court Assistant: Kulubi

