



**Gichuki v Republic (Miscellaneous Criminal Application
E073 of 2024) [2025] KEHC 1626 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CRIMINAL APPLICATION E073 OF 2024
LN MUTENDE, J
FEBRUARY 19, 2025**

BETWEEN

PETER KINGORI GICHUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Peter Kingori Gichuki, the Applicant, approached this court through an application dated 8th November, 2024 seeking leave to file an application to appeal out of time.
2. The application is premised on grounds that the Applicant was charged with two (2) counts;
 - i. Attempted Rape contrary to Section 4 of the *Sexual Offences Act* No. 3 of 2016.
 - ii. Assault causing actual bodily harm contrary to Section 251 of the *Penal Code*.
3. After full trial he was sentenced to serve five (5) years and twelve (12) months imprisonment, respectively. That he seeks to file an appeal out of time as a pauper. That he was unable to appeal within time because of poverty and he lacked fees for preparation of the record of appeal.
4. The application was not contested through a replying affidavit.
5. At the hearing the Applicant submitted that he was seeking to be awarded a non-custodial sentence, and he also prayed for the sentences to run concurrently.
6. The State through learned prosecution counsel, Mr. Obutu opposed the application orally. His argument is that the sentence meted out is reasonable and that the law did not allow the accused to make the application.



7. I have considered oral arguments of both parties herein. The Applicant is a lay person who may not have comprehended what was drafted. Section 159 (2) (d) of the Constitution provides that;

“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles;

(d) justice shall be administered without undue regard to procedural technicalities.”

8. This is a matter that calls into play procedural technicalities. This court is called upon to interrogate the question of fairness. The court should give the Applicant who was accused an opportunity to be heard by a superior court so that concerns that exist can be ventilated.

9. Section 349 of the Criminal Procedure Code provides thus;

“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 therefore.”

10. The Applicant was sentenced on 6th December, 2022. Sentences meted out were to run consecutively. Aggrieved, the Applicant filed a Miscellaneous Application No. E002 of 2023 seeking to mitigate on sentence. He pleaded ignorance of the law and failure to argue his case as he should have. He explained what transpired culminating into his arraignment. The court acted by calling for the original record of the trial court.

11. However, on 05/07/2023 the Applicant filed a notice of withdrawal of the appeal. He stated that the right of appeal was explained to him and he filed the appeal within the stipulated period of 14 days. He went on to state that at the time of the appeal he was mentally disorganized hence he intended to withdraw the appeal.

12. With or without confusion, it is apparent that the right of appeal was within the knowledge of the Applicant. Having withdrawn the appeal, he cannot turn around, some sixteen months later, and allege that he has a good cause to have the appeal admitted at this stage. Reasons given are not plausible enough to persuade this court to grant the order sought.

13. For that reason, the application fails and is accordingly dismissed.

14. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF FEBRUARY, 2025.

.....
L.N. MUTENDE
JUDGE

