



**Mugo v Republic (Miscellaneous Criminal Application
E011 of 2025) [2025] KEHC 6420 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CRIMINAL APPLICATION E011 OF 2025**

RM MWONGO, J

MAY 21, 2025

BETWEEN

MARTIN MURAGE MUGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a notice of motion dated 20th January 2025 premised on the grounds on its face and in the supporting affidavit thereof, it seeks the following orders:
 1. Spent;
 2. That the applicant be granted leave to appeal out of time; and
 3. That the honourable court be pleased to issue such other orders as are in the interest of justice.
2. It is the applicant's case that he was convicted of defilement and sentenced to 40 years imprisonment. He would like to challenge the judgment of the trial court but has delayed to lodge his appeal. He stated that he was not represented by an advocate at the trial and none of his family members knew about the outcome of the trial. Since he was not savvy with court procedures, he lost the case and was incarcerated. He did not know how to communicate his predicament to his family.
3. By the time his family members knew that he had been incarcerated, it was long past the appeal period. Regardless, they requested for typed proceedings for purposes of appealing, which proceedings were availed after sometime. It was his averment that the appeal raises issues of facts and law and it has high chances of success.



Respondent's Grounds of Opposition

4. The respondent filed grounds of opposition stating that the trial court clearly communicated that the applicant had a right of appeal within 14 days but he delayed. That the applicant's immediate family members were aware of the conviction and sentence since the victim was his own daughter, yet they chose not to pursue the appeal. It stated that the appeal does not have any chances of success since no valid matters of fact or law have been raised. That the delay in lodging the appeal was caused by the applicant's indolence and not his inability to procure trial court proceedings on time.

Submissions

5. The applicant filed written submissions while the prosecutor relied on the grounds of opposition.
6. It was the applicant's submission that his wife and children never heard about him after he was arrested and charged and they deserted the home. That his sister learned of the conviction and sentence through a friend in their village. He relied on the cases of *Kageliza v Republic* [2024] KEHC 13830 (KLR) and *Muisyo v Republic* [2024] KEHC 6764 (KLR) and urged the court to allow his application.

Issue for Determination.

7. The sole issue for determination is whether the applicant should be granted leave to appeal out of time.

Analysis and Determination

8. Section 349 of the *Criminal Procedure Code* permits this court to exercise its discretion in enlarging time to appeal for good cause. This provision states:

“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.” [Emphasis added]

9. The applicant contends that at the trial, his family members were not present and they did not know that he had been convicted and sentenced. That they heard the news through a friend of the applicant's sister, long after the matter had been concluded and the applicant has been sentenced. He stated that by that time, the appeal period had already lapsed. Regardless, the applicant's mother requested for trial proceedings so that she can assist in instituting the appeal. In his submissions, the applicant stated that his wife and children deserted their home and he has not seen them since his arrest.
10. From a perusal of the proceedings, the applicant's wife was one of the prosecution witnesses. The victim of defilement is the applicant's daughter who was about 3 years old at the time of the incident. The applicant's explanation is therefore hard to believe given the trial court's record of events. The respondent shares this sentiment and has urged the court to dismiss the application. It was its argument that the delay in appealing is entirely due to the applicant's indolence.
11. One of the reasons for the applicant's delay, was that he could not get the typed proceedings from court within a reasonable period. It is not clear from the applicant's pleadings, when his mother learned of



- his incarceration, or when she applied for copies of the proceedings for purposes of appeal. What is clear and evident is that by the time the copies were availed, the appeal period of 14 days had elapsed.
12. The importance of filing an appeal within the stipulated time cannot be gainsaid. Here, the applicant would like the court to enlarge time to file the appeal and then deem the draft on record as duly filed. In the case of *Samson Owiti Otambo v Republic* [2018] KEHC 6177 (KLR) the court stated:
- “The Jurisdiction of this Court to hear and determine the appeal is determined by the appeal being filed within the statutory period or within the enlarged period of time with leave of Court.”
13. Further, in the case of *Michael Onyango Owala v Republic* [2018] KEHC 1387 (KLR) the court stated as follows:
- “Where an appeal is filed outside the statutory period and no effort is made to seek to validate such an appeal by seeking and obtaining an order under the proviso to Section 349 of the *Criminal Procedure Code* to enlarge the time for filing of such an appeal or to have the appeal as filed out of time deemed to be duly filed, such an ‘appeal’ is no appeal at all. It is incurably and fatally incompetent and amenable to be rejected without delving into the merits thereof. Such is not a procedural error. It is an error that goes to the root of the appeal as it is the leave that would accord this court the jurisdiction to hear and determine an appeal that is filed out of time.” [Emphasis added]

Conclusions and Disposition.

14. In this case, the applicant is presently represented by Counsel who has failed to seek enlargement of time for an appeal to be deemed duly filed.
15. For the foregoing reasons, there is no good reason availed for enlarging the time to appeal.
16. However, the offence in question is a serious one. The sentence meted was imprisonment for 40 years. As such, the applicant ought to be heard on appeal in any event in light of Articles 48 and 50(2) (q) of *the Constitution* which provide for the applicant’s right to access to justice and fair trial, including right to be heard on appeal.
17. In the circumstances, the application shall be allowed on grounds of the seriousness of the offence and severity of the sentence, and on the further basis that the constitutional rights to access justice and to appeal should not be easily snuffed out in cases where the applicant was not legally represented in the first instance.
18. The Petition of appeal shall be filed within 7 days of the date hereof and be prosecuted expeditiously.
19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 21ST DAY OF MAY, 2025.

R. MWONGO
JUDGE

