



**Republic v Kirigo (Miscellaneous Criminal Application E024 of 2025)
[2025] KEHC 8702 (KLR) (Crim) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E024 OF 2025
K KIMONDO, J
JUNE 19, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

MARY KIRIGO RESPONDENT

RULING

1. The Director of Public Prosecutions (hereafter the DPP or the applicant) requests for leave to lodge an appeal out of time. The notice of motion is dated 23rd January 2025 and predicated upon the deposition of Mr. James Muage, Principal Prosecution Counsel.
2. The motion is fervently opposed by the respondent through a replying affidavit sworn on 27th March 2025.
3. The history is as follows: On 26th November 2024, the respondent was convicted by the lower court for the offence of stealing contrary to section 268 as read with 275 of the *Penal Code* and sentenced to serve probation for two years. Those proceedings were in the Chief Magistrates Court at Nairobi in Criminal Case No. 1295 of 2021 Republic v Mary Wairimu Kirigo.
4. The DPP was aggrieved by the sentence but failed to lodge an appeal within the prescribed time. In a nutshell, the DPP avers it “was not supplied with proceedings despite numerous visits to the registry” and that upon perusal of the judgment it “formed an opinion that the appeal should be lodged in this matter”.
5. Copies of the letters requesting for proceedings are attached and marked JM1 & 2. The DPP contends that the intended appeal has a high chance of success; and, that no prejudice will be suffered by the respondent if leave is granted. The draft petition of appeal is annexed marked JM3.



6. The respondent avers that the DPP does not disclose when he formed the opinion to pursue an appeal; and, that the delay of 59 days is unreasonable. It is also argued that the supply of the certified copies of proceedings or ruling was not a bar to drawing and filing a petition of appeal; and, that a copy of the handwritten judgment and sentence was available on the date of judgment and sentence. A copy is attached marked MK1.
7. At paragraphs 11 and 12 of the replying affidavit, the respondent avers that the judgment and sentence were sound; and, that she stands to suffer prejudice in costs of defending a frivolous appeal. I heard the respondent to say that the intended appeal has no chances of success.
8. I take the following view of the matter. The legal parameters of an application of this nature are well settled: This court has wide and unfettered discretion to extend time. The discretion must however be exercised judiciously. Some of the factors to be considered include the length of delay, the reasons for the delay, the nature of the intended appeal and whether the respondent will suffer prejudice if the court extends the time. See *Leo Sila Mutiso v Rose Mwangi*, Court of Appeal, Nairobi, Civil Application 251 of 1997 (unreported), *Mungatu v Republic*, Court of Appeal Nairobi, Criminal Application E009 of 2023 [2023 KECA 671 (KLR)].
9. I am alive that the DPP applied for certified proceedings as early as 6th December 2024. The DPP was the prosecutor in the lower court. He does not dispute that he was present during the delivery of the impugned judgment and sentence. The draft petition of appeal relates only to the sentence and particularly failure to order restitution. So much so that the DPP could have formulated the grounds of appeal and drafted a petition of appeal even without waiting for the certified copies of the proceedings. Furthermore, it remained open to seek leave to amend it later under section 350 of the *Criminal Procedure Code*. I am fortified by the fact that the handwritten transcript of the judgment and sentence was available at the time it was delivered as per the copies annexed to the replying affidavit.
10. Granted those reasons, the delay in presenting an appeal within the prescribed time is ill-explained. The respondent would obviously suffer an element of prejudice in costs of litigating the intended appeal.
11. For all those reasons, I decline to exercise my discretion in favour of the applicant. The Notice of Motion dated January 23, 2025 is accordingly dismissed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE 2025.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

Ms. Awino for the applicant instructed by the office of the Director of Public prosecutions.

Mr. E. Ombuna, Court Assistant.

