



**Wawire v Republic (Miscellaneous Criminal Application  
E101 of 2024) [2025] KEHC 10142 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10142 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E101 OF 2024**

**FN MUCHEMI, J**

**JULY 10, 2025**

**BETWEEN**

**ANTONY SONGOI WAWIRE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief facts**

1. The application for determination dated 18<sup>th</sup> November 2024 seeks for leave to file an appeal out of time. The applicant further seeks to be granted leave to be represented by an intermediary under Article 50(7) of *the Constitution*.
2. The applicant states that he is currently serving a thirty (30) year imprisonment term at Kamiti Main Prison after being convicted in Thika CM Criminal Case (SO) No. 74 of 2018 of the offence of defilement contrary to section 8(1) as read with 8(2) of the *Sexual Offences Act*. The applicant further states that he was waiting for his copy of judgment and proceedings to be availed to him for purposes of appeal which were not supplied and time run out.
3. In opposition to the application, the respondent filed a replying affidavit dated 27<sup>th</sup> May 2025. It was submitted that judgment against the applicant was delivered on 6<sup>th</sup> January 2022 yet the applicant has filed an application for extension of time to appeal in the year 2024, which is three years after the judgment.
4. The respondent argues that the applicant has not disclosed any good cause to warrant this court to allow the application. Further, the applicant has not accounted for or explained the delay in lodging an appeal against the trial court's decision.



5. The respondent states that the applicant has not annexed a petition for appeal which clearly demonstrates that the intended appeal is devoid of any arguable issue.
6. The respondent argues that the extension of time is not a right of a party but is an equitable remedy that is only available to a deserving party at the discretion of the court. Further a party who seeks extension of time has the burden of laying a basis to the satisfaction of the court, which the applicant has failed to do. The respondent argues that there are no sufficient reasons for the delay to warrant this court to exercise its discretion in favour of the applicant.

### **The Respondent's Submissions**

7. The respondent reiterates what she deponed in her affidavit and submits that the applicant has not annexed any proof to show his efforts in procuring the proceedings for the judgment delivered. The applicant has not disclosed any good cause to warrant the court to allow the instant application for leave to lodge an appeal out of time.
8. The respondent relies on the case of *Nicholas Kiptoo arap Korir Salat v IEBC & 7 Others* (2014) eKLR and submits that the applicant has not accounted for or explained the delay in lodging an appeal against the trial court's decision. Further, the applicant has not sufficiently made out a prima facie case or sufficient cause on the merits to warrant grant of any of the prayers sought in the application. The respondent further submits that the applicant did not annex a copy of the request for certified copies of the proceedings or judgment. Additionally, the applicant has not annexed a draft petition of appeal for consideration as to whether he has an arguable appeal.

### **The Law**

#### **Whether the applicant has made out a case for the grant of an order for leave to file his appeal out of time.**

9. The court's power to extend time for filing an appeal is provided for under Section 349 of the *Criminal Procedure Code* as follows:-

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 lapsed, 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.

10. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;



- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
  - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
  - f. Whether the application has been brought without undue delay.
11. The applicant was charged and convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* and was sentenced to 30 years imprisonment. Judgment was delivered on 6<sup>th</sup> January 2022 and the applicant filed the instant application on 18<sup>th</sup> November 2024. The applicant attributes the delay in filing his appeal to him waiting for his copy of judgment and trial records to be availed and financial constraints. Notably, criminal appeals may be filed and proceedings provided at no cost. Therefore, the claim of financial constraints by the applicant does not hold sway.
  12. The applicant has only stated that he was waiting for the proceedings and judgment but never told the court that he ever made a request to be supplied with the proceedings. The applicant did not annex any copy of the request for certified copies of the proceedings and judgment to the trial court to enable him file an appeal. Additionally, 2 years and 10 months have lapsed since conviction and the explanation provided for the delay is not satisfactory. Thus, the delay is inordinate and therefore inexcusable.
  13. The applicant has also not annexed a copy of the draft petition of appeal for the court to consider whether his grounds of appeal are arguable.
  14. It is noted that the applicant has not provided sufficient reasons for delay for this to exercise discretion in his favour. Bearing in mind that the prayer for leave out of time is not successful.
  15. The prayer for leave to be granted an intermediary is hereby rendered moot. Consequently, the application dated 18<sup>th</sup> November 2024 lacks merit and is hereby dismissed for lack of merit.
  16. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**F. MUCHEMI  
JUDGE**

