



**Muisyo v Republic (Criminal Petition E018 of 2022)
[2024] KEHC 6764 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL PETITION E018 OF 2022**

FR OLEL, J

JUNE 7, 2024

BETWEEN

JOSEPH MUTUA MUISYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant did file this undated application on 15th June 2022 and sought for leave to Appeal out of time. The applicant had been charged in six (6) criminal cases in Kangundo Principal Magistrates court No's 697, 698, 701, 726 , 727 of 2017 and consolidated with 717 of 2017 and was arraigned before Honourable Orimba (SPM) with various/multiple offences of breaking into a building and committing a felony, stealing, handling stolen property, Burglary, stealing from a dwelling house. He did plead guilty to the said charges, was convicted and sentenced. The said sentence were to run concurrently and accumulatively totaled to 34 years.
2. The appellant filed Machakos High Court Criminal Appeal No 108 Of 2017, which Appeal was heard on merit and the learned Judge, did find that there was no illegality in the sentence meted out by the trial court as the offences the applicant was charged with, took place on different dates and therefore did not form part of the same transaction. Hence there was nothing wrong with the trial court's order to have the sentences run consecutively.
3. The Applicant had also filed Machakos High Court Criminal Misc No E057 Of 2021 seeking review of the sentence in Kangundo 700 of 2017 based on Section 333(2) of the *CPC* and the fact that on Count II he had been sentenced to 14 years. vide an Ex tempore order made on 14.12.2021, the sentence therein on count II was set aside and the sentence on count I was reviewed to run from 14.07.2017 when the applicant was arrested under Section 333(2) of the *CPC*.



4. The applicant begs for leave to appeal out of time, but does not specify, which judgment/ruling he wants to Appeal against. For purposes of this application, the court will assume it is for leave to Appeal out of time against the judgement delivered in Machakos High Court Criminal Appeal No 108 OF 2017.

B. Analysis of Law

5. I have considered the application as well as the response by the Prosecution counsel.
6. The appellant pleaded guilty to the various offences as consolidated and by virtue of Section 348 of the *criminal procedure code* had his right to Appeal limited to the extent and legality of the sentence. Section 361 of the *criminal procedure code* also limits, a second Appeal to be confined to matters of law only.
7. Though the Appellant has filed his application for leave to Appeal out of time, four (4) years late and does not give a plausible reason to explain the delay, it would be in the interest of Justice under Article 48 and 50(2)(q) of the *constitution* of Kenya 2010, to allow him to access the court and have his appeal decided in a fair manner before an independent and impartial court.

Disposition

8. Leave is hereby granted to the Applicant to file his petition of Appeal as against the Judgement of Honorable Justice D.K Kemei delivered and dated on 4th October 2018 in Machakos High Court Criminal High Court Criminal Appeal No 108 OF 2017.
9. The petition of Appeal filed herein is deemed properly filed and the Appellant is granted a further 30 days from the date of this ruling to file his substantive grounds of Appeal.
10. The files herein be forwarded to the court of Appeal criminal registry for further Action.
11. It is so ordered.

Ruling **written, dated** and **signed** at **Machakos** this 7th day of **June, 2024**.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the **virtual platform, Teams** this 7th day of **June, 2024**.

In the presence of;

Appellant absent

Mr Mongare for Respondent

Sam Court Assistant

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