



Director of Public Prosecution v Okemo (Miscellaneous Criminal Application E395 of 2022) [2023] KEHC 1015 (KLR) (Crim) (13 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E395 OF 2022
JM BWONWONG'A, J
FEBRUARY 13, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION APPLICANT

AND

CHRYSNTHUS BARNABAS OKEMO RESPONDENT

RULING

1. The application dated December 16, 2022 was brought under the provisions of articles 48, 50, 157, 159, 165, and 259 of the *Constitution* of Kenya, 2010 and section 349 of the *Criminal Procedure Code* (cap 75) Laws of Kenya and all other enabling provisions of the law.
2. The applicant seeks the following orders:
 - i. Leave to file an appeal out of time against the decision of the Chief Magistrate's Court in Nairobi miscellaneous application No 9 of 2011 delivered on November 30, 2022.
 - ii. In the alternative, the court deems the attached petition of appeal against the said order of the trial court's having been properly filed within time.
 - iii. The court orders the appeal be placed before the Principal Judge for directions as to its admission and final disposal.
3. The application was premised on the grounds set out on the face of the notice of mention and reiterated in a supporting affidavit sworn by Victor Juma Owiti, Principal prosecution counsel. He deposed that the failure to file an appeal within 14 days was caused by the need of the applicant to confer with other actors in the criminal justice system. The delay was occasioned by the delay of the trial court in supplying the applicant with a certified copy of the proceedings.



4. This is despite the fact that the applicant instantaneously applied for the same upon delivery of judgement.
5. The applicant maintains that there has been no delay on their part. Further, that the delay was neither deliberate nor inordinate.

The Response Of The Respondent

6. The respondent did not file any response, notwithstanding that he had been served with notice of hearing. The proceedings therefore proceeded in his absence.

Analysis And Determination.

7. This court has considered the notice of motion dated December 16, 2022 as well as section 348A of the *Criminal Procedure Code* (cap 75) Laws of Kenya, which confers a right of appeal upon the Republic against an order of acquittal or an order refusing to admit a charge or complaint into hearing.
8. Section 349 of the *Criminal Procedure Code* (cap 75) Laws of Kenya empowers the court to extend the time within which a party may file his appeal out of time.
9. The decision sought to be appealed against arises from the extradition proceedings against the respondent which commenced in 2011. The ruling sought to be appealed against was delivered on November 30, 2022.
10. The time within which the applicant was required to file the appeal lapsed on December 21, 2022 without filing the said appeal. The applicant now applies for the extension of time within which to file an appeal out of time.
11. In the case of *Salat v Independent Electoral & Boundaries Commission & 7 others* [2014] KLR, the Supreme Court set out the principles to be considered by the court in exercising the discretion to extend time, within which an applicant may file his appeal out of time as follows: -
 - “(1) Extension of time is not a right of a party. it is an equitable remedy that is only available to a deserving party at the discretion of the court.
 - (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 - (3) Whether the court ought to exercise the discretion to extend time is a consideration to be made on a case to case basis.
 - (4) Whether there is a reasonable reason for the delay which ought to be explained to the satisfaction of the court.
 - (5) Whether there would be any prejudice suffered by the respondents if the extension was granted.
 - (6) Whether the application had been brought without undue delay and finally whether in certain cases like election petitions public interest ought to be a consideration for extending time.”
12. This court notes that the applicant annexed a copy of the request for certified copies of the proceedings, which was received in court on December 15, 2022. This court further notes that the certified copies of proceedings are yet to be supplied to the applicants.



13. The application is therefore premature and is therefore struck out. The applicant may file a similar application once he has been furnished with all the relevant documents to enable him lodge the application.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THROUGH VIDEO CONFERENCE THIS 13TH DAY OF FEBRUARY 2023.

J M BWONWONG'A

JUDGE

In the presence of: -

Mr. Kinyua: Court Assistant

Mr. Owiti for the applicant

There was no appearance for the respondent

