



**Republic v Ondiek & 4 others (Anti-Corruption and Economic Crimes Appeal E012 of 2022)
[2023] KEHC 993 (KLR) (Anti-Corruption and Economic Crimes) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL E012 OF 2022
EN MAINA, J
FEBRUARY 16, 2023**

BETWEEN

REPUBLIC APPELLANT

AND

CONCELIA ONDIEK 1ST RESPONDENT

CHRISTINE CHACHA 2ND RESPONDENT

THOMAS OMUGA 3RD RESPONDENT

FRED OCHANDA 4TH RESPONDENT

FRANCIS IMBO AWUOR 5TH RESPONDENT

RULING

1. On October 27, 2022 the State preferred an appeal challenging the acquittal of the Respondents in a judgment delivered by the trial court on October 4, 2022
2. On October 28, 2022 this court admitted the appeal, directed Counsel for the State to file and serve a Record of Appeal within 14 days and set down the appeal for mention on November 22, 2022.
3. When Counsel appeared before me on November 22, 2022 Counsel for the 4th respondent drew my attention to an application dated November 9, 2022 filed by the 4th respondent seeking to strike out the appeal.
4. The gravamen of the application is that the appeal was filed out of time; that the judgment in the matter having been delivered on October 4, 2022 and the time limited for appeals being fourteen (14) days the appeal ought to have been filed on or before October 18, 2022; that no leave was obtained to file the appeal out of time and hence it is incompetent and it should be struck out.



5. The application is supported by all the other respondents and they have filed affidavits in which they give a chronology of events and contend just like the 4th respondent that the last day for filing the appeal was October 18, 2022 and that this appeal was filed 7 days after the lapse of the time limited for appeals under section 349 of the *Criminal Procedure Code*. It is their prayer that the 4th Respondent's application be allowed.
6. The application is however vehemently opposed by the appellant. as can be discerned from the replying affidavit and submissions of counsel for the appellant it is her contention that whereas it is true that the judgment appealed from was delivered on October 4, 2022 the sentence was deferred to and pronounced on October 18, 2022; that time for filing the appeal should be reckoned from the date that the sentence was pronounced and accordingly the appeal was filed within time and the application should be dismissed.
7. The 4th respondent filed a further/supplementary affidavit in which he reiterated that the time for the appeal accrues from the date of judgment. He contended that the trial magistrate became functus officio upon delivering the judgment and hence his application has merit and it should be allowed.
8. Learned Counsel for the parties canvassed the application by way of written submissions which in my view, being a rehash of the averments in the affidavits of their clients, need not to be reproduced here. Suffice it to state that I have carefully considered the application, the grounds thereof, the affidavits of the parties, the rival submissions and the law.
9. It is not in dispute that section 349 of the *Criminal Procedure Code* limits the time for appeals to fourteen (14) days. It is also not in dispute that the judgment in this case was delivered on October 4, 2022. I did not also hear the Respondents disputing that upon delivery of the judgment the trial magistrate deferred sentencing and pronounced the same on October 18, 2023. The issue for determination in my view is whether in this case time for filing the appeal should be reckoned from the date the judgment was delivered or from the date the sentence was pronounced.
10. The respondents herein were charged with several counts some jointly and in others separately and in the judgment delivered on October 4, 2022 some were acquitted and some were convicted. For those who were convicted sentencing was deferred to October 18, 2022. It is my finding therefore that whereas an appeal against those who were acquitted should have been preferred on the 14th day after the judgment. However, section 349 of the *Criminal Procedure Code* also stipulates that the time for appeal is reckoned 14 days after the sentence. It is not therefore unreasonable that the Appellant waited until the pronouncement of the sentences against the accused persons who were convicted. It would otherwise have been very untidy and a waste of public funds to file an appeal against some of the respondents and then another against the others barely a week after that. I take it therefore that in the circumstances of this case time for appeal begun to run from the date of the sentence but not from the date of the judgment.
11. Accordingly, the appeal of the 4th respondent is deemed to have been filed within time and the application dated November 9, 2022 is dismissed.

Orders accordingly.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 16TH DAY OF FEBRUARY, 2023.

E N MAINA

JUDGE

