



REPUBLIC OF KENYA



**Obiero v Republic (Miscellaneous Criminal Application 21
(E023) of 2022) [2023] KEHC 1527 (KLR) (6 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CRIMINAL APPLICATION 21 (E023) OF 2022**

PN GICHOHI, J

MARCH 6, 2023

BETWEEN

DENNIS OBIERO ALIAS DADY APPLICANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the conviction and sentence in Cr. Case No. S.O 04 of 2020 at CM's Court at Kisii by Hon. Mac'andere delivered on the 19th day of November 2021)

RULING

1. The Applicant has filed this undated application under a certificate of urgency on 1st December 2022 seeking orders that:-
 1. Spent
 2. Spent.
 3. The court allows the Applicant's appeal filed out of time.
 4. Leave be granted to the Applicant for extension of time to appeal out of time due to his earlier intention to appeal.
 5. The Applicant be supplied with the lower court file to enable him properly prepare this appeal.
 6. The Applicant be present during the hearing and determination of this application/appeal.
2. The application is supported by affidavit sworn by NAV/963/022/LIFE, Dennis Obiero Alias Dady. He states that he was charged with the offence of Defilement contrary to Section 8 (1) as read with Sec. 8(2) of the *Sexual Offences Act* No. 3 of 2006 in Criminal Case No. S.O 04 of 2020 at Kisii CM's Court and sentenced to life imprisonment on 19th November 2021 by Hon. Mac'andere. Justifying



the delay, he states that he relied on his relatives who promised to hire an advocate for him but they were unable due to financial constraint.

3. His payer to appear during the hearing of the application is spent and he did appear before this court during the hearing of the application and reiterated that his application be allowed as prayed.
4. The learned State Counsel Mr. Ayondo for the Prosecution, conceded to the application but intimated that he will respond to the appeal once the Applicant files it.

Determination

5. Having been convicted on and sentenced on 19th day of November 2021, the Applicant was clearly out of time by the time he filed the his notice of appeal, Petition of Appeal and this application on 1st December 2021. Section 349 of the [*Criminal Procedure Code*](#) provides :-

“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 elapsed, 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.”

6. It is therefore for the Applicant to show good cause why he should be allowed to file an appeal out of time. His only ground for delay is his financial constraints. The relatives he relied on and who promised to hire an advocate for him did not make it.
7. The Applicant has a right to be represented by counsel if he so desires and his attempt to get one for purposes of the appeal, and which caused him this delay, is a satisfactory explanation in the circumstances. Further, the delay in this case is about Eleven (11) days which cannot be termed as unreasonable. Besides, the application for leave is conceded by the Respondent.
8. In the circumstances, the application is allowed to the extent and on condition that the Applicant files and serves his Petition of Appeal within Fourteen (14) days from the date of this ruling.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISII THIS 6TH DAY OF MARCH, 2023.

PATRICIA GICHOHI

JUDGE

In the presence of:

Dennis Obiero Alias Dady - Applicant

Mr. Ayondo for Respondent

Isindu, Court Assistant

