



REPUBLIC OF KENYA



**KENYA LAW**  
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**Too v Republic (Miscellaneous Criminal Application  
19 of 2019) [2023] KEHC 18039 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18039 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS CRIMINAL APPLICATION 19 OF 2019**

**JK SERGON, J**

**MAY 18, 2023**

**BETWEEN**

**DUNCAN KIPLANGAT TOO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal was heard and dismissed by the Hon Lady Justice Ongeru on January 22, 2021.)*

**RULING**

1. Duncan Kiplangat Too, the Applicant herein filed the Application dated December 23, 2019 whereof he sought for leave to Appeal out of time. He swore an Affidavit he filed in support of the Application.
2. The applicant deponed in the Affidavit that he failed to file the Appeal within time the time fixed by statute because at the time, he was not within his right senses.
3. Mr Musyoki, Learned Senior Assistant Director of Public Prosecutions opposed the applicant's Application stating that the same has no merit.
4. The applicant further stated that he wanted the period he served in custody to be included so that the sentence imposed can be adjusted.
5. Mr Musyoki did not address this Court on the issue of re-sentencing and instead left it to this court to determine the issue.
6. I have considered the arguments put forward by the parties. Two issues arose for the determination of this Court.

First, is the question as to whether leave to Appeal out of time should be granted. Mr Musyoki has already pointed out that the application has no merit.



7. I took the liberty peruse the Original file and other Files relating to the applicant. It has come to the attention of this Court that the applicant had actually filed an Appeal namely:- Kericho HCCRA No 56 of 2015 –

*Duncan Kiplangat Too vs Republic*

8. The aforesaid appeal was heard and dismissed by the Hon Lady Justice Ongeru on January 22, 2021. In view of the foregoing, I find the application seeking for leave to Appeal out of time to be without merits.

9. As regards the Second Oral Prayer on interference of the sentence, I find that the issue was raised in the Petition of Appeal which Appeal was dismissed by Hon Lady Justice Ongeru. The issue appears to be *res judicata*.

10. In the end, I find the Application filed on December 23, 2019 to be without merit. The same is dismissed.

**DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF MAY, 2023.**

.....

**J.K. SERGON**

**JUDGE**

**In the presence of:**

C/Assistant – Rutoh

Mr. Musyoki for the State

Applicant – Present in Person

