



**Kimani v Republic (Anti-Corruption and Economic Crimes  
Appeal 9 of 2017) [2023] KEHC 22508 (KLR) (Anti-  
Corruption and Economic Crimes) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL 9 OF 2017  
EN MAINA, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**JANE WANGUI KIMANI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the Judgment in Chief Magistrates Anti-Corruption  
Case No. 7 of 2014 delivered by Hon. L.N. Mugambi on 3rd February 2017)*

**RULING**

1. The appellant/applicant's notice of motion dated July 4, 2023 filed on July 4, 2023 seeks two orders; -
  - “i) That the appellant be granted leave to file the notice of appeal and institute an appeal against the judgment and decision of the court delivered by Hon. Justice Hedwig I. Ong’udi on March 20, 2018, out of time.
  - ii. That the time for filing the notice of appeal and instituting an appeal against the judgment and decision of the court delivered by Hon. Justice Hedwig I. Ong’udi on March 20, 2018 be extended for such a period as the court may deem fit.”
2. The grounds for the application as stated on its face and in the supporting affidavit sworn by Jane Wangui Kimani on even date are that:-
  - “a) The appellant was charged and convicted before the Nairobi Chief Magistrate's Anti-Corruption Court for three offences of corruptly soliciting



for a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the *Anti-Corruption and Economic Crimes Act* No 3 of 2003; corruptly soliciting for a benefit contrary to section 39 (3) as read with section 48 (1) of the *Anti-Corruption and Economic Crimes Act* No 3 of 2003 and corruptly receiving a benefit contrary to section 39 (3) as read with section 48 (1) of the *Anti-Corruption and Economic Crimes Act* No 3 of 2003.

- b. The appellant was fined Kshs 50,000/= in default 6 months imprisonment on count 1 and Kshs 60,000/= in default 6 months imprisonment each on count 2 and 3.
  - b. Being aggrieved and dissatisfied with the judgement and decision of the Chief Magistrate's Anti-Corruption Court, the appellant filed an appeal to this court against the conviction and sentence.
  - b. The court delivered its judgement on March 20, 2018 wherein it found that the appeal lacked merit and dismissed the same. The conviction and sentence of the Chief Magistrate's Anti-Corruption Court were upheld.
  - b. The appellant being dissatisfied with the judgement and decision of this court instructed her advocate then on record to institute an appeal in the Court of Appeal against the whole of the said decision.
  - b. The appellant's advocates informed the appellant that they had instituted the appeal to the Court of Appeal.
  - b. That on diverse dates in the years 2018, 2019, 2020, 2021, 2022 and 2023 the appellant made several visits to her advocates' offices to follow up on the progress of the appeal and she was informed by her advocate that they were waiting for the Court of Appeal to fix dates for the hearing of the appeal.
  - b. That during the last visit to her advocate's office on June 30, 2023 the appellant asked to be given the criminal appeal number for follow up but she was informed that the appeal was not filed.
  - b. The appellant's failure to institute the appeal within the prescribed time was not deliberate but due to inaction and misleading on the part of her advocates.
  - b. That the appellant should not be denied the right of appeal due to a mistake, inaction and misleading on the part of her advocates,
  - b. No prejudice will be occasioned to the respondent if the time for instituting the appeal to the Court of Appeal is extended.”
3. On July 31, 2023 this court directed counsel appearing for the parties to canvass the application through written submissions but by the time of writing this ruling none had been received.
4. In essence the appellant/applicant seeks to invoke the powers of this court under section 7 of the *Appellate Jurisdiction Act* which states: -

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:



Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”

5. It is clear from the above section that whereas a person who has been convicted and sentenced is required to appeal within 14 days of the judgment and sentence (see section 349 of the [Criminal Procedure Code](#)) power is donated to the High Court to extend the time to do so and indeed it may do so even where time for giving the notice may have expired.
6. It is my finding therefore that this court is afforded an unfettered discretion to grant leave. However, the discretion must as always be exercised judicially and the leave is not to be granted as of right. There must be a plausible explanation for the delay for the application to succeed.
7. Whereas this is a criminal case I am guided by the decision of the Court of Appeal in the case of [Mwangi v Kenya Airways Ltd](#) [2003] KLR 486 where the court stated:-

“(4) Matters which the court takes into account in deciding whether or not to grant an extension of time are:-

- a. The length of the delay;
- b. The reason of the delay;
- c. Possibly, the chances of the appeal succeeding if the application is granted; and
- d. The degree of prejudice to the respondent if the application is granted.

.....

(8) The list of factors a court would take into account in deciding whether or not to grant an extension of time is not exhaustive. Rule 4 of the [Court of Appeal Rules](#) (cap 9 sub leg) gives the single judge unfettered discretion and so long as the discretion is exercised judicially, a judge would be perfectly entitled to consider any other factor outside those listed so long as the factor is relevant to the issue being considered.”

8. I am also guided by the principles set out by the Supreme Court in the case of [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR that:-
  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 should 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. The delay should be explained to the satisfaction of the court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;



6. Whether the application has been brought without undue delay. ...”
9. In this case the judgement sought to be appealed was delivered on March 20, 2018 a period of five (5) years plus. The ground for this application is that the delay in filing the notice of appeal arose from the ineptitude of the applicants then advocate who failed to file the appeal and did not disclose that to the applicant until June 30, 2023.
10. I have given due consideration to the above ground and it is my finding that it is not plausible. In my view the applicant was as much responsible for seeing to it that the notice of appeal was filed in time as was her advocate. Moreover, she has not annexed anything to demonstrate that she indeed instructed her advocate to appeal. In this age and time when the courts have opened themselves up and even gone digital it would have been very easy for the applicant to confirm whether the appeal had been filed. The delay of five years is not only inordinate but also inexcusable. This application cannot be anything but an afterthought. I am fortified in so saying by the fact that even though counsel for the applicant was in court when directions were given to file submissions none were filed. While I appreciate that the applicant’s right to appeal under article 50(2) (c) of the *Constitution* is sacrosanct, I find that the unexplained inordinate and inexcusable delay prevents me from exercising my discretion in her favour.
11. In the premises the application for leave to file notice of appeal out of time is dismissed for lack of merit.

**Signed dated and delivered virtually on this 21<sup>st</sup> day of September, 2023.**

**E.N. MAINA**

**JUDGE**

