



**Ali v Republic (Miscellaneous Application E029 of 2024)  
[2024] KEHC 14367 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS APPLICATION E029 OF 2024  
JN ONYIEGO, J  
NOVEMBER 14, 2024**

**BETWEEN**

**HASSAN MUHAMED ALI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, Hassan Muhamed Ali, was convicted of the offence of defilement in Garissa Chief Magistrate’s Court Sexual Offences Case No. 1037 of 2010.
2. The particulars of the offence alleged that on 29.04.2010 at [particulars withheld] Village in Lagdera District within North Eastern Province, he intentionally and unlawfully caused penetration of the genital organ namely penis into the vagina of FM, a girl aged 9 years.
3. On his own plea of guilty, the applicant was sentenced to serve life imprisonment with hard labour.
4. He has since moved this court seeking leave to file his appeal out of time for the reason that previously, he lacked the record to engineer the process of appeal. He urged this court to allow this prayer as sought.
5. His application was supported by grounds mainly geared towards challenging his conviction and sentence. He argued that the prosecution did not prove its case to the required standards and therefore, his conviction was not safe. He urged this court to quash his conviction and consequently his sentence as the same was not unsupported.
6. The respondent opposed the application by stating that previously, the applicant had challenged his conviction and sentence vide CR. Appeal No. 328/2010 at Milimani Law Courts and therefore, this appeal ought to be dismissed.
7. In his rejoinder, the applicant urged that he withdrew the said appeal before filing the application herein and that he is desirous of prosecuting the instant application.



8. I have carefully considered the application herein and the parties' rival submissions. Basically, the applicant is seeking leave to appeal out of time. This application therefore calls for the application of Section 349 of Criminal Procedure Code which stipulates that: -

Limitation of time of appeal

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.

9. The Supreme court in the case of Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] eKLR stated as follows;

“Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it”

10. Grant of appeal out of time is at the discretion of the Court when it is proved that there was reasonable ground that caused the delay. Extension of time to facilitate filing appeal out of time is an equitable remedy that is only available to a deserving party after the burden of laying a basis to the satisfaction of the court is discharged. The delay must not be unreasonable and no prejudice should be occasioned on the respondent. [See Michael Mukhwana Wanyonyi vs Republic [2021] eKLR]. In fact, a court is not bound to extend its discretion to the indolent.
11. The applicant herein deposed that he took long without preferring an appeal for the reason that he did not have the record to roll out the process. The applicant was sentenced on 03.05.2010 after he pleaded guilty to the charges and the application herein filed almost 14 years later. This court is alive to articles 47, 50 and 159 of the *constitution* but the same notwithstanding, no evidence was presented before this court showing whether an application for the proceedings was made. Clearly, nothing was shown to enable the court exercise its discretion in favour of the applicant to file his appeal out of time.
12. It is against the above holding that I find that the applicant did not satisfactorily explain the reason for delay before filing his appeal. Courts operate within operational time lines. Time is not unlimited. It would be unreasonable to entertain proceedings to reopen 14 years after closure. Litigation whether criminal or civil must come to an end at some point. Accordingly, the application is dismissed for lack of merit.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**J. N. ONYIEGO**

**JUDGE**

