



**Wafula v Republic (Criminal Miscellaneous Application E062 of 2024)
[2024] KEHC 14273 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E062 OF 2024
RN NYAKUNDI, J
NOVEMBER 15, 2024**

BETWEEN

GODWIN BARASA WAFULA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The application dated 4th April, 2024 has been brought under the provisions of Section 349 of the Criminal Procedure Code. The applicant seeks orders that leave be granted to file an appeal out of time.
2. The application is premised on grounds that the applicant was charged and convicted for the offence of defilement contrary to section 8(1) as read with Section 8(2) of the *Sexual offences Act* and sentenced to life imprisonment. He avers that he did not lodge a timeous appeal because he was never provided with the trial court's judgment to enable him prepare his memorandum of appeal.
3. To this end, he averred that due to his earlier intention to appeal, he prays for leave to appeal out of time because up to now he has not been provided with the documents alluded to above and the time for appealing has been exhausted.

Determination

4. The matter before me raises fundamental questions about access to justice and the delicate balance between procedural law and substantive justice. The Applicant, serving a life sentence for a serious sexual offense, seeks to exercise his constitutional right of appeal. This right, enshrined in Article 50(2) (q) of the *Constitution*, must be zealously protected, particularly where an appellant faces such a severe curtailment of liberty.
5. The explanation proffered by the Applicant merits careful consideration. His inability to obtain the judgment is not merely a procedural hurdle but strikes at the heart of effective access to appellate



justice. As held in *Republic v Karisa Kenga Kaliwi Criminal Misc. Application No. 11 of 2019*, where delay stems from institutional constraints in obtaining court documents, the court must lean towards facilitating access to justice rather than enforcing strict procedural timelines.

6. This discretionary power must be exercised judiciously, guided by established principles. The Supreme Court of Kenya in *Nicholas Kiptoo arap Korir Salat –V- IEBC & 7 Others [2014] eKLR* set out the principles to be considered:
 - i. Extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the Court.
 - ii. A party seeking extension of time bears the burden of laying a basis to the satisfaction of the court.
 - iii. The court's discretion to extend time must be considered on a case-by-case basis.
 - iv. There must be a reasonable explanation for the delay.
 - v. The court must consider whether prejudice would be suffered by the respondent if extension is granted.
 - vi. Whether the application has been brought without undue delay.
 - vii. In certain cases, public interest may be a relevant consideration.”
7. The Supreme Court in *Nicholas Kiptoo arap Korir Salat (supra)* emphasized that extension of time is an equitable remedy. Equity demands that this court examines not just the delay itself, but its context and causes. Here, the Applicant, incarcerated and with limited means to follow up on his documents, has demonstrated a genuine intention to appeal from the outset.
8. Several compelling considerations support granting this application. Most notably, the gravity of a life sentence demands heightened scrutiny, making it imperative that the conviction's propriety be thoroughly examined through the appellate process. The delay in filing the appeal stems not from the Applicant's negligence but from systemic challenges in obtaining court documents; an institutional rather than personal failing. Moreover, the fundamental right of appeal, a cornerstone of our criminal justice system, hangs in the balance. The prosecution would suffer no prejudice by allowing this appeal out of time, as the delay primarily originated from court processes beyond either party's control. Finally, public interest strongly favors ensuring that convictions carrying such severe penalties can be tested through the appellate process, maintaining public confidence in the administration of criminal justice.
9. Having carefully weighed all factors, I find this a compelling case for exercising the court's discretion under Section 349 of the Criminal Procedure Code. The Applicant has demonstrated not just good cause, but compelling reasons why justice demands that his appeal be heard despite the delay.
10. The right to appeal against a life sentence must not be reduced to a mere formality, contingent on bureaucratic efficiency. Where an appellant demonstrates a genuine intention to appeal and faces institutional barriers in obtaining necessary documents, the courts must err on the side of substantive justice.
11. Accordingly, I make the following orders:
 - a. The application dated 4th April, 2024 is hereby allowed.



- b. The Deputy Registrar shall ensure that certified copies of the proceedings and judgment are prepared and served upon the Applicant within 14 days of this ruling.
- c. The Applicant shall file his appeal within 21 days of receiving the said documents.
- d. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 15TH DAY OF NOVEMBER, 2024.

.....

R. NYAKUNDI

JUDGE

