



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muli & another (Miscellaneous Criminal Application E005 of 2024)
[2025] KEHC 13466 (KLR) (Crim) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2024
AM MUTETI, J
SEPTEMBER 25, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

STEPHEN NDAMBUKI MULI 1ST RESPONDENT

ERICK MUTINDA MUTISYA 2ND RESPONDENT

*(Being an application seeking to lodge an appeal out of time arising
from the ruling meted out by Hon. Esther k. Kimilu (SPM) in Criminal
Case number 2021 of 2015 at the Chief Magistrate Court at Milimani)*

RULING

1. The applicant by way of a Notice of motion dated 8th January 2024 sought to be granted leave to appeal out of time.
2. The applicant further sought to have the draft Petition of Appeal admitted and deemed to be properly filed and served.
3. The application is exposed to be brought under Section 348A, 349 and 354(3) of the Criminal Procedure Code Cap 75 of the Laws of Kenya.
4. According to the applicant the delay in filing the appeal was not deliberate nor intended for.
5. The applicant stated that they were prevented from appealing within the statutory period of 14 Days because they were unable to obtain certified copies of proceedings in time.
6. The applicant argued that the grant of leave to file an appeal out of time would not prejudice the respondent.



7. The application is supported by an affidavit sworn by Robert Mutuma on 5th January 2024 in which he deposes that the ruling acquitting the respondents was delivered on 14th of March 2023 and on 4th May 2023 they made the first request to be supplied with proceedings from the court. Further, on 26th September 2023 a follow up request was made to the court and thereafter they made the instant application.
8. The deponent further deposed that the complainant moved the ODPP to consider filing an appeal in the matter on the 24th of March 2023. The deponent has annexed copies of the letter to the court as well the letter by the complainant as evidence of the efforts made in trying to secure a certified copy of the proceedings.
9. I however note that the application is silent as to when the certified copy of the ruling was availed to the applicant and as such this court is inclined to consider the merit of the application purely on the basis of whether or not there was inordinate delay in presenting the application for leave to appeal out of time.
10. The respondents are strenuously opposed to the grant of leave their argument being that the instant application is not brought in good faith and that all that the applicant is doing is to try and assuage the concerns of the complainant who is keen to have the criminal case against the respondent reinstated.
11. The respondent's submissions on the matter are dated 6th February 2024 and this court has duly considered the same.
12. The respondents contend that the issues that were the subject of the trial in this matter were resolved vide a Land and Environment court decision in Nairobi in ELC 136 of 2009 in which a ruling was delivered on 11th of May 2023 declaring that the property in issue still belongs to Ukamba Agricultural Institute and the land is not public land.
13. The respondents therefore urged this court to find that the instant application is an afterthought and brought in bad faith.
14. In applications of this nature, the court is enjoined to consider whether the delay in the filing of an application of this nature is inordinate and or inexcusable. The fact of a party not being able to obtain proceedings from court within time is an excusable cause. The court must therefore consider the delay objectively.
15. The applicant in this matter made the first request to the court for proceedings barely 1 month and 19 days from the date of the ruling. The request was not granted immediately meaning therefore that the certified copy of the Ruling was not ready'
16. The applicant followed up the matter on the 26th September 2023 and filed the instant application on 10th January 2024. The complainant vide a letter dated 16th of March 2023 urged the Director of Public Prosecutions to consider appealing against the ruling barely two days after its delivery.
17. The complainant was obviously diligent in petitioning the Director of Public Prosecution for action in line with the provisions of Section 20 (1) (a) of the *Victim Protection Act* which gives a victim of a crime the right to submit any information for consideration to the police or prosecution on a decision whether or not to lay a charge, or to appeal or withdrawal.
18. The applicant by receiving such information and acting on it does not act in violation of any law but the decision whether to appeal or not is entirely left to the applicant in exercise of the powers conferred upon the Director of Public Prosecutions under Article 157 of the *Constitution*.



19. The contention by the respondents that the applicant is acting at the behest of the complainant is that misguided and misconceived. The applicant has a responsibility to act under the law and ensure that the interests of the administration of justice and the public interest is protected under Article 157 (11) of the Constitution.
20. The Fair Administrative Actions Act as read with the provisions of Article 47 of the Constitution demand action on the part of the applicant whenever requests are received from the victims of crime. I therefore do not find anything out of character in the applicant seeking to appeal after exercising his independent mind on the matter even though the issue was raised by the victim.
21. This court is guided by the decision of Supreme Court in Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR) where the court set down the following principles to be considered in applications for extension of time;-
 - a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 - b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 - c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case -to- case basis;
 - d. Whether here was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 - e. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 - f. Whether the application had been brought without undue delay; and;
 - g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
22. The applicant in presenting the application has failed to disclose when the certified ruling was made available to them. The omission by the applicant is serious and must be avoided in the future.
23. The court is minded under Article 159 of the Constitution to consider the justice of the matter. The subject matter in issue concerns interests in land that clearly has some community interests in it. The Supreme Court has properly guided the courts to determine matters of leave to extend time on a case-by-case basis. An order of extension of time is an equitable relief and where a party is not shown to have been indolent in their quest to file the appeal, the law must come to their aid. The applicant cannot be said to be guilty of laches thus the order sought is fair in the circumstances.
24. The court notes that the respondents contend that the Environment and Land Court has determined the issues in this matter but this court is left to wonder how the Environment and land Court could have determined the criminal elements of the dispute yet it has no jurisdiction over criminal matters. See Republic vs Karisa Chengo and 2 Others, Petition 5 of 2015 Supreme Court.
25. It is important for the court to state that the fact that there was a civil dispute in court that was determined between the parties, that would not necessarily extinguish any allegations of criminality and individual culpability in relation to the matter. It is precisely for that reason that parliament in its wisdom enacted Section 193A of the Criminal Procedure Code which states;-

“Concurrent criminal and civil proceedings



Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”

26. The import of the above is that there could as well be situations where criminal proceedings would run parallel to civil proceedings as was in this case. See *Dantla Subba Reddy and Others vs Bhavanam Chinna Venkata Reddy* First Appeal No.1025 /2016 and 233 of 2016 High Court of Andhra Pradesh at Amaravati., *R vs CM's Court Mombasa and Another ex parte Mildred Mbuya Joel* Misc Civil Application No. 115 of 2013
27. The applicant has approached this court seeking an equitable relief which in this courts view should be granted considering the gravity of the issues in the criminal proceedings related thereto and the public interest element in the matter.
28. The delay in filing the application was not unreasonable and therefore the door to the appellate corridor should not be shut to exclude the applicant.
29. The issues of merit or otherwise of the appeal do not fall for consideration now and shall be determined once the appeal is set down for hearing.
30. The orders of this court are that;-
 - a. Leave to appeal out of time is hereby granted
 - b. The draft petition of appeal is deemed to have been filed within time.
 - c. The applicant shall cause the record of appeal to be prepared and lodged within 14days from the date of this ruling failing which the leave shall stand vacated.
 - d. The matter will be mentioned in 30th October 2025 to confirm compliance before the Deputy Registrar of this court.
31. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Habiba

Ms Ogega for the state

No appearance for the Respondent

