



**Republic v Kabecha (Criminal Miscellaneous Application E028 of 2023)  
[2025] KEHC 13756 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13756 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL MISCELLANEOUS APPLICATION E028 OF 2023  
DO CHEPKWONY, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**GEOFFREY KIHARA KABECHA ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the Notice of Motion application dated 15<sup>th</sup> May, 2023 and filed under Article 50 (2) (q) of *the Constitution*, Section 354 and 348 of the Criminal Procedure Code which seeks the following orders:-
  - a. That the Applicant be allowed to file Appeal out of time.
  - b. Spent.
  - c. Spent.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Hellen Ngesa, a public prosecutor, sworn on 15<sup>th</sup> May, 2023. The Applicant holds that the Respondent was charged at Gatundu Law courts with the offence of assault contrary to Section 251 of Penal Code and the prosecution called witnesses to testify in the matter and they produced several exhibits in support of their case in court. The Respondent was put on his Defence but the trial Magistrate on 25<sup>th</sup> November, 2022, the trial Magistrate acquitted the Respondent of the heinous offence without considering the evidence adduced by the State. The Applicant contends that it was dissatisfied with the said decision of the trial court and intends to appeal to this court out of time.
3. According to the Applicant, the delay to appeal was occasioned by poor coordination with the ODPP, Gatundu sub-office whereby there was delay in obtaining proceedings from the trial Court and this was done out of the 14 days' timelines within which to file an appeal. The Applicant has urged that it



would be in the interest of justice that this court allows it to file the appeal out of time and no prejudice will be occasioned to the Respondent since it is the victim of assault that continues to suffer and live with the injuries sustained thereof.

4. The Respondent opposed the application through a Replying Affidavit sworn on 22<sup>nd</sup> May, 2024 where he holds that he was tried and acquitted in a fair trial on 25<sup>th</sup> November, 2022, which was after three (3) years of trial. That throughout the trial, the Applicant was always in court and on the date of acquittal the trial Court stated that parties had fourteen (14) days to appeal if unsatisfied with his decision. It is the Respondent's contention that it is the Applicant who failed to file the appeal within the required timelines and now wants to continue subjecting him to endless litigation without giving any good reasons why the appeal was not filed on time. He thus urges the court to dismiss the application.

### **Analysis and Determination**

5. The court has considered the application filed by the prosecution, the supporting affidavit and the grounds raised therein together with the annexed Petition of Grounds of Appeal. The court has also considered the Replying affidavit filed by the Respondent herein and finds that the main issue for determination is whether the court should grant the Applicant leave to file an appeal out of time.
6. The law under Section 349 of the Criminal Procedure Code states as follows:-

“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.”
7. 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.”
8. In this case, it is the Applicant's case that the delay in filing the appeal was occasioned by not coordinating with the ODPP, Gatundu sub-office and thereafter a delay in obtaining the proceedings. The Respondent was acquitted on 25<sup>th</sup> November, 2022 and the prosecution had fourteen (14) days to file an appeal if it was dissatisfied with the Judgment of the trial Court. It is also worth-noting that the application is dated 15<sup>th</sup> May, 2022, which is more than five (5) months since the Judgment was allowed. This Court has gone through the record of the trial Court and finds that the Applicant has not attached letter or request for certified copies of the proceedings or the Judgment to show efforts made in obtaining the same or delay thereof as alleged save for the one made by the Respondent as the complainant herein. The provisions of Section 349 of Criminal Procedure Code are clear on the requirement to be satisfied if one is to obtain leave to file an appeal out of time. There is no evidence to demonstrate the intention to appeal by the Applicant.



9. In this case, the Court finds that the Applicant has not substantiated the reasons given for the delay in filing the appeal out of time. Therefore, the Court finds that the application lacks merit and proceeds to dismiss the same.
10. The original record of proceedings in Gatundu CMCC No.795 of 2019, Republic –vs- Goeffrey Kihara Kabecha to be taken back to Gatundu Law Courts for safe custody.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

