



**Said v Republic (Criminal Appeal E014 of 2023)
[2025] KECA 1568 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1568 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CRIMINAL APPEAL E014 OF 2023
SG KAIRU, AK MURGOR & KI LAIBUTA, JJA
OCTOBER 3, 2025**

BETWEEN

MORRIS SAID APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal against the decision of the High Court of Kenya at Garsen (S. Gitinji, J.)
delivered on 4th April 2022 in Miscellaneous Criminal Application number E013 of 2022)*

JUDGMENT

1. Morris Said, the Appellant, was charged with the offence of defilement contrary to Section 8 (1) as read with section 8(4) of the [Sexual Offences Act](#) No. 3 of 2006 and sentenced to fifteen (15) years imprisonment.
2. Aggrieved, the Appellant filed a miscellaneous application before the High Court seeking leave to file the appeal out of time, which application the learned Judge dismissed.
3. Before the court was an undated application filed by the Appellant seeking orders that the court be pleased to allow the Appellant's application and grant the appropriate relief as sought by the applicant.
4. The application was premised on the grounds that:
 - i) leave to appeal out of time be granted; that he was charged for the offence of defilement contrary to section 8 (1) as read with section 8(4) of the [Sexual Offences Act](#), No. 3 of 2006 and sentenced to fifteen (15) Years Imprisonment; that, after conviction and sentence, he appealed to the High Court at Garsen while at Hindi Prison but that, for unknown reasons, the initial appeal did not reach the High Court's registry; that he further lodged another application seeking extension of time to appeal to the High Court vide Misc. Application No. E013 of 2022, which was dismissed for want of merit; that he could not lodge a timely appeal because he



was never provided with the trial court's judgment and, consequently, the mandatory period of 14 days expired before he could lodge the appeal; and that he nevertheless still prays for leave and for time to be extended to file an appeal to the High Court.

5. The application was supported by the Appellant's sworn affidavit and written submission, which largely reiterated the contents of the motion, save to add that the right to appeal is a fundamental right pursuant to Article 50(2)(g) of *the Constitution* and that, since he is a convict and a pauper who cannot incur any costs for the preparation of this application, he sought to have the costs waived. He averred that no prejudice would be suffered by the State if the extension was granted.
6. When the appeal came up for hearing on a virtual platform, the Appellant appeared in person while learned prosecution counsel for the State Ms. Nyawinda appeared for the Respondent. In his written submissions, the Appellant submitted that he did not lodge a timely appeal because he was never provided with the trial court's proceedings and judgment to enable him prepare the appeal. He therefore prayed for leave for time to be extended to file his appeal to the High Court at Garsen. On their part, the respondent did not oppose the application.
7. The filing of a criminal appeal to the High Court is governed by section 349 of the Criminal Procedure Code, which states that-

“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 periods of fourteen has elapsed and shall so admit on 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 there from.”

8. The above provision stipulates that an appeal from the trial court to the High Court must be filed within 14 days. However, it also stipulates that the court appealed to may extend the time for filing of such an appeal if sufficient reasons are given for the delay or failure to file the appeal within the 14 days.
9. According to the scanty record of appeal, the Appellant's application was fixed for hearing on 4th April 2022. On that day, the matter was placed before the court in the absence of the Appellant and the State Counsel. The record does not indicate whether the Appellant's application was opposed.
10. The High Court, in determining the Appellant's application in the absence of the Appellant and the State Prosecution Counsel, held that:

“I have seen the application for leave to appeal out of time dated 19.3.2022. The applicant was sentenced on 11.3.2021. Today is 5.4.2022 and he filed the application almost a year after where the time allowed in law in which to file an appeal is 14 days. One year is inordinate delay, and the reason advanced for it “to hire an advocate for the purpose” does not mitigate the delay. The application lacks merit and is declined.”

11. It is trite law that the decision whether or not to extend the time for appeal is essentially discretionary. See *Leo Sila Mutiso vs Helen Wangari Mwangi* [1999] 2 EA, In the case of *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* [2018] eKLR, the Supreme Court of Kenya pronounced itself on the question of extension of time thus:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is



the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favorably exercisable.”

12. As stated above, when the trial Judge heard and determined the application for extension of time, neither the Appellant nor the Prosecution Counsel were afforded an opportunity to be heard.
13. When faced with similar circumstances, this Court in *Heguda vs Republic* (Criminal Appeal E111 of 2023) [2024] KECA 735 (KLR) observed that the only provision that deals with summary determination in criminal cases is section 352 of the Criminal Procedure Code, which does not apply to applications for leave to appeal out of time. The Court held that, “...the learned Judge erred by acting without jurisdiction when he dismissed the appellant’s application without hearing any of the parties who, as is indicated on the record, were before him.”
14. From the foregoing, it is clear that the learned Judge acted without jurisdiction when he dismissed the Appellant’s application without hearing any of the parties. As a consequence, the appeal is merited.
15. In sum, the appeal be and is hereby allowed. The Appellant’s application for extension of time to file an appeal to the High Court from the decision of the Senior Principal Magistrate’s Court is remitted to the High Court for determination on its merits and on a priority basis before a Judge of the High Court other than S. Githinji, J.
16. It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 3RD DAY OF OCTOBER, 2025.

S. GATEMBU KAIRU FCIArb

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA CArb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

