



**Republic v Okoth (Criminal Miscellaneous Application E218 of 2024)  
[2025] KEHC 14941 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14941 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E218 OF 2024**

**A MABEYA, J  
OCTOBER 24, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**JARED OBIERO OKOTH ..... RESPONDENT**

**RULING**

1. Jared Obiero Okoth was charged with the offence of defilement contrary to section 8(1) as read with 8 (2) of the *Sexual Offences Act*. It was alleged that on diverse dates in the month of April 2023 at [Particulars Withheld] in Kisumu East sub county within Kisumu County intentionally caused his penis to penetrate the vagina of CA, a child aged 15 years.
2. After trial, the trial court found that the evidence on record the state had failed to prove its case against the respondent and proceeded to acquit him.
3. By a Motion on Notice dated 28/10/2024, the state has sought that time be extended for it to file its appeal. The application is brought under section 349 of the Criminal Procedure Code.
4. The applicant contends that the delay in filing the Petition of Appeal was occasioned by the fact that the judgment was not immediately brought to the attention of the applicant. That the impugned judgment was delivered on the 12/7/2024 and that the same was brought to its attention on the 8/8/2024 through a letter authored by Mama Ngina Children’s Home.
5. That a copy of judgment and typed proceedings was only availed on the 7/8/2024 by which time the 14 days for lodging the appeal had lapsed. That the matter involves a child and the best interest of a child is paramount specifically considering that the intended appeal has overwhelming chances of success.



6. The application substantively seeks leave of this court to appeal out of time. It is premised on section 349 of the Criminal Procedure Code which provides 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. From the foregoing, it is the position in law that an appeal may be admitted out of time if the Court is satisfied that the failure to comply within the time provided for was caused by the inability to obtain a copy of the judgment or order appealed against and a copy of the record within reasonable time after applying for the same.

8. In this regard, the reasons for granting leave to appeal out of time under section 349 of the Criminal Procedure Code, are well spelt out and statutorily ring-fenced. They are only two, to wit, first the inability to obtain a copy of the judgment or order appealed against within the 14 days post the decision and, secondly, the inability to obtain a copy of the record within reasonable time after applying for the same.

9. However, it should also not be forgotten that further guidance ought to be obtained from the dictates of *the Constitution* more so in Articles 10(2) and 159(2) in so far as a court is to render substantive justice to all parties.

10. I have considered the entire record. The first consideration is the period of delay, and the second is the reason(s) thereof.

11. On the first ground, the applicant alleges that it was not aware of the judgment and only became aware of the same on the 8/8/2024 vide a letter from Mama Ngina Children’s Home. I note that when judgement was read in open court on the 12/7/2024, the state was represented by one Nyongesa designated as State Counsel in the Coram. Accordingly, the state was well aware of the delivery of the judgment. No explanation was given why the said Nyongesa did not take action.

12. The applicant ought to have filed its petition within 14 days of the date of delivery of the impugned judgment which would have been the 26/7/2024. However, the state moved court on the 28/10/2024. That was a period of 2 months post the 14 days’ window for appeal under section 349 of the Criminal Procedure Code.

13. Having settled the delay period, the reason then follows. section 349 of the Criminal Procedure Code mainly attributes the delay to failure to obtain the impugned decision or a copy of the record.

14. It was averred that the copy of judgment and typed proceedings was only availed on the 7/8/2024 which was more than 14 days after the date of delivery of judgment. In that case, the requirements in section 349 of the Criminal Procedure Code yield in favour of the Applicant.

15. I have considered the subject matter of the petition of appeal and note that in this matter the interests of justice shall be best served in according the applicant an opportunity to prefer the appeal.

16. Having said so, it is this court’s finding that the application is merited. The following final orders do hereby issue: -



- a. The Notice of Motion dated 28/10/2024 is merited.
- b. The Petition of Appeal be filed and served within 14 days of the date hereof.
- c. Other orders shall be made in the appeal file.
- d. This file is marked as closed.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

