



REPUBLIC OF KENYA



**SKK v Republic (Miscellaneous Criminal Application E031 of 2024)  
[2025] KEHC 16661 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16661 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2024  
BM MUSYOKI, J  
NOVEMBER 14, 2025**

**BETWEEN**

**SKK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file appeal out of time and as a pauper  
against judgment and sentence in the Chief Magistrate's Court at  
Gatundu sexual offence case number E009 of 2021 dated 14-10-2021)*

**RULING**

1. In the lower court, the applicant was convicted of the offence of incest by Honourable L.M. Wachira Chief Magistrate on 14-10-2021. It is recorded that he was informed of his right to lodge an appeal within fourteen days. The applicant did not exercise that right. Instead, he went to sleep until 29-04-2024 when he filed an undated application which prayed for;
  1. The applicant be allowed to file his appeal out of time and as a pauper.
  2. The application is supported by the attached sworn affidavit.
2. The affidavit in support of the application allegedly sworn by the applicant was also not dated or commissioned. In this six-paragraph affidavit, the applicant alleged that after being convicted, he was promised by his family members that he would be assisted in facilitation of filing an appeal, a promise they failed to keep due to financial inability and with that, he asked the court to grant him leave to file the appeal out of time.
3. The respondent has opposed the application with a nine-point grounds of opposition which in summary are to the effect that the application was filed after an inordinate period and without sufficient explanation and the court's discretion to extend time has not been properly invoked.



4. The parties appeared before me on 8-09-2025 when they confirmed that they had filed their respective submissions to the application. However, the submissions filed by the applicant on 17-08-2025 are on a main appeal which does not exist. The submissions do not address the court on the applicant's application for leave and in that regard, I do not take the application as having been properly prosecuted. There is no proper appeal before me and as such, I cannot give any consideration to the applicant's aforesaid submissions.

5. Section 349 of the *Criminal Procedure Code* Chapter 75 of the Laws of Kenya provides 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 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.’

6. From the above provision, it is my view that the decision to whether or not grant leave for a party to file appeal out of time is discretionary and must be exercised judiciously. Further, an applicant who desires the court to grant it leave to file appeal out of time must convince the court that he was prevented from filing an appeal in time by good reasons. In this matter, the applicant has given only one reason which is that he had been promised by his family members that they would facilitate filing of the appeal but were prevented from doing so by financial incapability.

7. The applicant has not specified the alleged family members or when such promises were made. I do not believe the reason given is genuine as filing of an appeal does not cost much that would prevent a party from filing. In any event, if that were the reason, the applicant would have approached the court to be allowed to file appeal as a pauper as he has done in the current application.

8. The applicant has also not demonstrated the efforts and steps he made in having the appeal filed in time. The period between the conviction and the filing of the current application is indisputably inordinate and no explanation has been given as to when the applicant came to learn that the appeal had not been filed. In the circumstances, I agree with the counsel for the respondent that the applicant has not accounted for the two and half years it has taken him to file the application.

9. The circumstances of this application are similar to those in *Mwangi v Republic* (2025) KEHC 10750 (KLR) where the court after considering the explanation given by the applicant dismissed the application by holding that;

‘Notably, the applicant has not averred that he ever requested for judgment or the record of proceedings. Neither did he annex a copy of the request for certified copies of the proceedings and judgment. Additionally, two (2) years have lapsed since conviction and the explanation provided for the delay is not satisfactory. Thus, the delay is inordinate and inexcusable in my view.’

10. Having said the above, it is my finding that the application herein is not merited. The same is dismissed.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**B.M. MUSYOKI**



**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of the applicant from Kamiti Maximum Prison and Miss Torosi for the respondent.

