

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT LODWAR**  
**CRIMINAL APPEAL NO. E028 OF 2024**

**REPUBLIC**.....

.....**APPELLANT**

**VERSUS**

**BENSON LOGIEL**

**LOKWANG**.....**RESPONDENT**

**NT**

**(Appeal from the judgment of the Chief Magistrate’s Court at Lodwar in MCAC  
No. 1 of 2022 by Hon. D. Orimba, (CM))**

**RULING**

**The Background facts**

1. This appeal traces its genesis to the appointment of the Respondent to various high-ranking positions within the County Government of Turkana. It was alleged by the prosecution that the Respondent, in his bid to secure and maintain his employment as a Senior Assistant Secretary and later as a County Executive Committee Member (CECM), presented academic certificates that were neither genuine nor issued by the purported institutions. Specifically, the documents in question included a Bachelor of Economics and Sociology degree purportedly from Chuka University and a Diploma in Business Administration and Human Resource Management from Premese Africa Development Institute.
2. Investigations by the Ethics and Anti-Corruption Commission (EACC) suggested that the Respondent had never graduated from either institution hence he was charge with six counts involving the fraudulent acquisition of public property, the use of misleading documents, the provision of false information to the Ethics and Anti-Corruption Commission and making of a document without authority.
3. The summary of the prosecution’s case was thus that the Respondent’s continued receipt of a salary from the County Government of Turkana

constituted a fraudulent acquisition of public property, as his employment was predicated on these falsified credentials. The total sum alleged to have been fraudulently acquired between January 2018 and January 2020 amounted to Kshs 6,741,955.

4. The trial court terminated the prosecution on counts 1-3 without calling the respondent to defend himself after the court determined that no prima facie case had been established. The respondent was however put on his defence on counts 4-6 but acquitted him of those as well on the basis that no nexus was proved between the respondent and making of the documents.
5. Dissatisfied with this outcome, the Republic, through the ODPP, filed a Petition of Appeal dated 2nd October 2024, challenging the entire judgment of acquittal on the grounds that the trial magistrate misapprehended the evidence and misapplied the law regarding document fraud and the burden of proof. The appeal was filed after a substantial delay necessitating the current application for leave to appeal out of time which is the immediate subject of this Court's consideration.

### **The Application**

6. By its Notice of Motion dated 25<sup>th</sup> July, 2025, the Appellant seeks leave to file the appeal out of time. The application is premised on grounds found in its face and reiterated in the Supporting affidavit of John Baranga Limo, a Prosecution Counsel at the ODPP Lodwar. The Applicant avers that the judgment was delivered on 24<sup>th</sup> September, 2024, and that the ODPP inadvertently failed to file the appeal within the required period due to administrative delays. These delays were attributed to the necessity for extensive consultations between the Lodwar ODPP office, the ODPP head office in Nairobi, and the EACC regarding the viability and grounds of the appeal.
7. The Applicant further contends that the intended appeal raises substantial questions of law and facts which go to the very root of justice in anti-corruption litigation. Specifically, the Appellant argues

that the trial magistrate misapprehended the evidence of PW5, the Chuka University Registrar, who confirmed that the Respondent's academic documents were forged. The Applicant maintains that the appeal has a high chance of success and that it is in the interest of justice to grant leave, as the Republic stands to suffer irreparable harm if the acquittal of a public officer on counts of falsifying qualifications is allowed to stand without appellate review.

### **Response and Resistance against the Application.**

8. In response to the Application, the Respondent filed a Replying Affidavit sworn on 17<sup>th</sup> September, 2025 and argued that the delay of over ten months is inordinate, unexplained, and prejudicial. He characterizes the Applicant's excuse of administrative delays as thin and non-existent, arguing that the ODPP, as a well-resourced state agency, should not be allowed to benefit from its own lethargy.
9. The Respondent highlights the milestones he has achieved since his acquittal, arguing that the principle of finality in litigation should protect him from a revived prosecution. He points out that he was appointed as the County Executive Committee Member (CECM) for Roads and Public Works on 5<sup>th</sup> December, 2024, a position he currently holds, and that his family has since welcomed a new-born baby. He argues that a trial after such a long interval would violate his constitutional right to a fair and expeditious determination under Articles 50(2) and 159(2)(b) of the Constitution.
10. Furthermore, the Respondent notes that the Appellant failed to annex a draft memorandum of appeal to the Notice of Motion, which he claims is a fatal procedural defect that prevents the court from assessing whether the intended appeal is indeed arguable. He urges the court to find that the Appellant has slept on its rights and to dismiss the application with costs.

### **Summary of the Applicant's Submissions**

11. The Appellant's submissions, filed by the Office of the Director of Public Prosecutions, focus on the alleged errors of the trial magistrate in evaluating the evidence for Counts 4, 5, and 6. Regarding Count 4, providing false information to the EACC, by arguing that the evidence of PW8 and PW7 clearly showed that the Respondent submitted and signed a self-declaration form (Exhibit 12) containing the false claim of being a Chuka University graduate. The Appellant contends that the ingredients of the offense under Section 46(1)(d) of the Leadership and Integrity Act were fully met: the information was false, the Respondent knew it was false, since he never attended the university, and it was given to the EACC.
12. On Counts 5 and 6 on making documents without authority, the Appellant relies on the testimonies of PW5 and PW9 and argues that the trial court's demand for a direct nexus, effectively an eyewitness to the forgery, is an impossible standard that ignores the doctrine of recent possession of forged documents. Citing the case of **Dennis Binyenya vs Republic**, the appellant submits that when a document contains false information, like grades or graduation status, and is used by the person in whose name it is issued, the court should infer that the person either made the document or procured its making.
13. The Appellant further submits that the Respondent's general denial in his defense was insufficient to rebut the specific, authoritative evidence from the University Registrar and the Institute Director. Under Section 111 of the Evidence Act, the facts regarding his education were especially within his knowledge, and the Respondent failed to provide any credible proof such as student ID cards, fee receipts, or photos to counter the institutions' claims that he was never a student.
14. The appellant therefore pleads that the application be allowed and that since the appeal had in fact been filed, albeit belatedly, the same be deemed duly filed.

### **Summary of the Respondent's Submissions**

15. The Respondent argues that in a criminal trial, the standard of proof is beyond reasonable doubt and that the burden never shifts to the accused to prove his innocence. The Respondent maintains that the prosecution failed to establish that *he* was the one who physically created the documents or the signatures thereon.
16. Regarding the nexus requirement, the Respondent submits that Section 357(a) of the Penal Code requires proof of the act of making. He argues that showing the document is false is not enough; the prosecution must prove that the accused person signed or executed it without authority. The Respondent contends that without a handwriting expert to link his handwriting to the forged signatures, the charge cannot stand.
17. The Respondent also relies on the trial court's finding regarding uncalled witnesses. He argues that the failure to call Nehemiah Gitao Kapel, the student whose index number was allegedly shared, meant that the court had to draw an adverse inference that Kapel's testimony would have undermined the prosecution's case. He concludes that the trial court was right to give him the benefit of the doubt, as the evidence presented by the state was barely adequate.

### **Issues, Analysis and Determination**

18. Having perused the trial record, the judgment, the application for extension of time, and the rival submissions of both parties, the sole issues isolating itself for determination is whether the Appellant has established the thresholds for grant of leave to file the appeal out of time.
19. The pivotal point for this court's determination is Section 349 of the Criminal Procedure Code, which mandates that an appeal be entered within fourteen days unless the court, for good cause, admits it out of time.

20. The principle of *good cause* is an equitable one, requiring the court to evaluate the length of the delay, the reasons for it, and the overall interests of justice.<sup>1</sup>
21. In the present case, the judgment was delivered on 24<sup>th</sup> September 2024, and the application for leave was filed on 25<sup>th</sup> July 2025, a delay of approximately ten months. The Appellant attributes this to administrative delays and consultations between the ODPP offices on the ground and headquarters and the EACC. The court takes judicial notice of the fact that the ODPP is a large national institution that often requires internal clearances and inter-agency consultations, especially in matters of public interests like anti-corruption matters. In **Republic v Kana Tura Mamo & 3 others**, the High Court acknowledged that inter-agency consultations in corruption cases could constitute *good cause*, especially given the statutory interdependence between the EACC and the ODPP. However, a ten-month delay stretches this principle to its near limits.
22. The Supreme Court in **Nicholas Salat v IEBC** held that the discretion to extend time is unfettered but must be exercised judiciously. While the Respondent argues that the explanation is *thin*, the court must strike a just balance between the need for strict and timely actions intended for expeditious disposal of legal disputes and the public interest in the firm tackle and finality of anti-corruption proceedings. In the context of a public officer holding high office on potentially forged credentials, the threshold for what constitutes a "satisfactory explanation" for the state may be interpreted more flexibly to ensure that substantive justice is not defeated by administrative inertia. The court is not averse to the prospects of inertia being employed as a driver of impropriety where integrity is at stake.
23. Furthermore, the arguability of the appeal is a critical factor for consideration. The court has read the trial magistrate's judgment and juxtaposed same against the submissions by the applicant, as countered by the respondent and is in no doubt that there are arguable

---

<sup>1</sup> Nicholas Kiptoo Korir arap Salat v IEBC & 7 Others (2014) eKLR.

points to be canvassed when the appeal gets its chance to be heard. The court only identifies the determination on nexus between the respondent and authorship of the questioned certificates as well the adverse inference on failure to call one Nehemiah Gitao Kapel to be sufficient points to go for trial. In coming to this conclusion, the court is guided that an arguable point must not be that which must succeed.

24. On prejudice and the principle of finality, the Respondent's case is waxed on his professional advancement as a CECM and his personal milestones. While these are important to him, they do not necessarily constitute legal prejudice in the context of an extension of time. Legal prejudice usually involves the loss of evidence or the inability to defend oneself due to the passage of time. Since this is a matter of record and the witnesses have already testified, the delay does not diminish the Respondent's ability to defend the acquittal on the merits.
25. The court notes the importance of the principle of finality but appreciates same not to be an absolute shield against appellate review where there are allegations of a miscarriage of justice. The Respondent argues that litigation must come to an end, but in the case of public office and leadership integrity, the public interest in ensuring that officers are properly qualified is a continuing and overarching one. If the credentials used to enter the public service were indeed forged, and the officer thus got into a position they didn't merit, then the finality of a flawed or unmerited acquittal would itself be a miscarriage of justice.
26. The flip side of the argument is that is the respondent was unmerited for the position and thus the consequential emoluments and benefits, public good and interest would demand that the question is handled on the merits to highest possible level. That would not only satisfy the public need for confidence in their servant but also vindicate the respondent when his innocence is ultimately established by a second and higher judicial authority.
27. Furthermore, the court notes that the Respondent accepted the CECM appointment in December 2024, well after the initial Petition of

Appeal was filed in October 2024. He was therefore aware that the state was challenging his acquittal. Any professional risk he took was with the knowledge that the matter was potentially still active. Therefore, his claim of irreparable harm is significantly mitigated by his own knowledge of the pending appeal.

28. The upshot from the foregoing discussions and conclusions, after the court has anxiously evaluated the totality of the circumstances, finds that the Applicant has established *good cause* for the admission of the appeal out of time. The delay is determined excusable, the appeal assessed as arguable and no prejudice is portended by the appeal being admitted out of time.
29. Consequently, this court makes orders that the Application for leave to file an appeal out of time brought by the Notice of Motion dated 25<sup>th</sup> July 2025 is hereby granted in that the Petition of Appeal dated 2<sup>nd</sup> October 2024 is hereby deemed as duly filed and served upon the Respondent.
30. Let the Deputy Registrar ensure that the record of appeal, including the typed proceedings from Lodwar MCAC No. 1 of 2022, is prepared and served on all parties within thirty (30) days.
31. To facilitate the expeditious disposal of the appeal, the same is now admitted and directed to be canvassed by way of written submissions. The appellant has 30 days from today to file and serve written submissions so that the respondent also files and serves submissions within 30 days after service.
32. The appeal is stood over to the 3.6.2026 for mention to confirm compliance and for further directions.
33. It is so ordered.

Dated, signed and delivered virtually this 13th day of March, 2026

  
Patrick J O Otieno

Judge