



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maritim v Republic (Criminal Application E003 of 2020)  
[2024] KECA 407 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KECA 407 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPLICATION E003 OF 2020  
FA OCHIENG, JA  
APRIL 26, 2024**

**BETWEEN**

**THOMAS KIPRUTO MARITIM ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to lodge an appeal out of time  
against the judgment and sentencing of the High Court of Kenya at Bomet  
(G. Dulu, J.) delivered on 20th May 2020 in H.C.CR.A. No. 30 of 2018)*

**RULING**

1. On 20<sup>th</sup> May 2020, Justice George Dulu delivered a judgment in an appeal in which the respondent had challenged the acquittal of the applicant herein.
2. The learned Judge set aside the acquittal of the applicant and substituted it with a conviction.
3. Earlier, the applicant had been charged before the Magistrate’s court at Sotik. The offences which he was accused of committing were forgery and uttering of a false document. The said 2 counts were in relation to a title document for the property designated as IR 134631, which was otherwise designated as LR NO. 7288/644.
4. One document was issued at the Lands Office in Sotik, whilst the other document was issued at the Lands Office in Nairobi.
5. It was the finding of the learned trial Magistrate that whilst the document emanating from Nairobi did not bear the signature of the Land Registrar, the prosecution had failed to prove that the signature was made by the applicant. In the circumstances, the trial court acquitted the applicant.
6. However, when the respondent herein lodged an appeal to the High Court, the learned Judge held that the applicant was guilty of uttering a false document.



7. Having convicted the applicant, the learned Judge deferred the mitigation and the sentencing to another date.
8. According to the applicant, neither he nor his advocates were served with any notice of the date when the sentencing would take place.
9. It was only later that the applicant was made aware that he had been sentenced to 3 years' imprisonment, together with a fine of Kshs 400,000/-.
10. The applicant's case was that he wished to appeal against the conviction and the sentence. However, as the time when he could have lodged the appeal had lapsed, he sought leave to appeal out of time.
11. The respondent conceded the application.
12. I have given due consideration to the application. I am satisfied that the parties were both absent from the court when the learned Judge handed down the sentence. The record of the proceedings on 20<sup>th</sup> May 2020 shows that the parties were not in court at the material time.
13. The record of the proceedings bears the following statement;

“Due to the Covid-19 pandemic and Ministry of Health guidelines and regulations, this sentence was sent by email to parties/counsel at addresses given.”
14. However, the record does not bear any of the email addresses to which the sentence was allegedly sent.
15. On that ground, I find that the respondent was right to have conceded the application because there was a real probability that the applicant did not receive the record of the sentence timeously.
16. Section 349 of the *Criminal Procedure Code* 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.”
17. It follows, therefore, that the court is clothed with discretionary powers to be exercised in the interest of justice. In the case of *Sila Mutiso v Rose Hellen Wangari Mwangi*, Civil Application No. 255 of 1997 UR the Court stated thus:

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are:

First, the length of the delay. Secondly, the reason for the delay;

Thirdly possibly the chances of the appeal succeeding if the application is granted; and

Fourthly the degree of prejudice to the respondent if the application is granted.”



18. The Supreme Court of Appeal of South Africa in the case of S.V Smith [2012] 1SACR 567 elaborated the test to be applied on applications for leave to appeal in the following manner:

“What the rest of reasonable prospect of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore the applicants must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding, more is required to be established than there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorized as hopeless. There must, in other words, be a sound, a rational basis for the conclusion that there are prospects of success on appeal.”

19. In the event, the applicant is granted leave to appeal out of time.

He has 7 days from the date of this ruling to file the notice of appeal.

20. I make no order as to the costs of the application.

**DATED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF APRIL, 2024.**

**F. OCHIENG**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

