



**Ali v Republic (Criminal Application E134 of 2023)
[2024] KECA 856 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KECA 856 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPLICATION E134 OF 2023**

**PO KIAGE, JA
JULY 12, 2024**

BETWEEN

SUDI KOZI ALI APPLICANT

AND

REPUBLIC RESPONDENT

(Application to file a notice of appeal out of time in an intended appeal against the judgment and decree of the High Court of Kenya at Garissa (Ali-Aroni, J.) delivered on 23rd November, 2021 in HCCR No. 8 of 2019)

RULING

1. The applicant Sudi Kozi Ali seeks leave to have the duly filed appeal admitted out of the statutory period allowed for filing of appeals.

In grounds on the face of the motion and in the supporting affidavit, the applicant explains that he was the accused in HCCR No. 8 of 2019 at the High Court in Garissa. Judgment was delivered on 23rd November 2021 wherein Ali-Aroni, J. (as she then was) convicted him of manslaughter on his own plea of guilty and sentenced him to 20 years imprisonment. He applied for a copy of the judgment together with typed proceedings on 1st December 2022, to enable him to lodge an appeal, but the same were issued on 9th August 2023. The applicant indicates that he was unable to file the notice of appeal in time because he engaged the services of an Advocate by the name Alfred Omwancha to file the appeal and his relatives went ahead and paid him fees, but he did not. The Advocate was apparently sickly for some time and therefore he could not proceed with the appeal. Consequently, his relatives had to approach the Advocates who had represented him at the trial court to assist him. The applicant states that between August and November 2023, they were waiting for the High Court to file the record of appeal at the Court of Appeal registry, which was done in November 2023. He avers that his counsel has already prepared the petition of appeal which is ready for filing.



2. I note that the notice of appeal dated 1st December 2022 was lodged out of time on 7th February 2023, against the High Court decision of 23rd November 2021. Evidently the delay is inordinate. However, I am cognizant of the constraints that a prisoner operates under in an effort to pursue legal redress. The applicant was sentenced to serve 20 years imprisonment for the offence of manslaughter. I am at my discretion prepared to be more solicitous
3. and to overlook omissions in order allow him to pursue his right of appeal, on sentence, as indicated in the notice of appeal. I make that finding considering that there is nothing on record filed by the Director of Public Prosecutions in opposition to the application.

In the result, I allow the application to the end that the notice of appeal dated 1st December 2022 and lodged on 7th February 2023 be and is hereby deemed to be properly filed. It shall also be deemed to be properly served in the event that it was already served upon the Director of Public Prosecution.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY, 2024.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

