



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ombeva v Republic (Criminal Application E005 of 2023)  
[2024] KECA 812 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KECA 812 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPLICATION E005 OF 2023**

**HA OMONDI, JA**

**JULY 5, 2024**

**BETWEEN**

**GEOFFREY AMWAI OMBEVA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for leave to file an appeal out of time from  
the Judgment and Decree of the High Court of Kenya at Kakamega  
(Musyoka, J.) dated 13th May 2022 in HCCRA No. 30 of 2019)*

**RULING**

1. By a Notice of Motion dated 19<sup>th</sup> April, 2023, the applicant Geoffrey Amwai Ombeva, seeks that leave be granted to file an appeal out of time; and the annexed draft petition of appeal be deemed as duly filed. The application is supported by an affidavit of even date, sworn by the applicant.
2. The applicant was convicted on a charge of grievous harm, and sentenced to serve 10 years imprisonment, in Kakamega HCCRA No. 30 of 2019 delivered on 13<sup>th</sup> May, 2022. Aggrieved by the sentence imposed. Apparently, the period for lodging the appeal has lapsed as the applicant sought for copies of proceedings much earlier through the firm of A.B.L. Musiega who filed a notice of appeal but did not proceed to file a record and remained dormant. So, while he was waiting for the supply of proceedings from the trial court, time within which to file the appeal lapsed. Much later after making a change of advocate, the applicant's current counsel M. Kiveu Advocate applied for the proceedings on his behalf; and he contends that the delay to lodge his appeal within the period allowed was thus not of his making. He has the annexed draft petition of appeal which he prays to be deemed as duly filed upon payment of the requisite fees.



3. The respondent through the Senior Prosecution Counsel, Ms.Busienei concedes the application, acknowledging that judgment having been delivered on 13<sup>th</sup> May 2022, the delay in filing the notice of appeal is not inordinate given the reasons adduced in.
4. The applicant has given a chronology of events, and aptly demonstrated that the delay was caused by events beyond his control. The application having been conceded is granted; and the draft petition of appeal is deemed as properly filed and served.

**DATED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF JULY, 2024.**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

