



**Oyimba v Director of Public Prosecutions & another (Criminal Appeal (Application)  
E006 of 2023) [2024] KECA 1247 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1247 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL (APPLICATION) E006 OF 2023  
JM NGUGI, JA  
SEPTEMBER 20, 2024**

**BETWEEN**

**SHELTON WEKULO OYIMBA ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application to stay orders emanating from the Ruling of the High Court at  
Kakamega (Anuro, J.), dated 28th March, 2023 in Criminal Pet. No. E003 of 2022)*

**RULING**

1. The application before the Court, dated June 23, 2023, contains the following prayers:
  1. -spent -
  2. That this Honourable Court be pleased to grant leave for the applicant/appellant to file his appeal out of time.
  3. That pending hearing and determination of this application, this Honourable Court be pleased to maintain the status quo of stay order earlier issued by the Honourable High Court for Kakamega Criminal Case No. E94 of 2022 the main subject matter of the petition and this appeal.
  4. That pending appeal, this Honourable Court be pleased to stay any orders emanating from the ruling the Honourable High Court made on the 28<sup>th</sup> March, 2023 in respect to Judgment in Criminal Petition No. E003 of 2022 involving the parties.
2. This is the kind of application usually referred to as an “omnibus” application in appellate practice. It is “omnibus” because it contains discordant prayers – prayer 2 is one to be considered before a



- single Judge of the Court under Rule 4 of the [Court of Appeal Rules](#) – while prayers 3 and 4 are for consideration by a full bench of three judges under Rule 5(2)(b) of the [Rules](#). It is also discordant because the grant of prayer 1 must precede the consideration of prayers 2 and 3.
3. Notwithstanding this near-fatal procedural flaw in the application, noting that it was filed by the applicant *pro se*, I was determined to consider the prayer appropriate for a single Judge – prayer 2 – on the merits. However, a perusal of the motion itself, the supporting affidavit deposed by the applicant, as well as his written submissions soon put paid to my charitable intentions: the information supplied is too sparse; too attenuated; and too confusing to benefit from the exercise of discretion by this Court.
  4. From the information supplied, the Court learnt that there was a Criminal Petition, to wit Kakamega High Court Criminal Petition No. E003 of 2022. The Court also learnt that a judgment was delivered with respect to that petition on March 28, 2023 by Hon. Justice John Wananda. The applicant was, apparently, not informed of the date of the judgment and was, therefore, unaware of its delivery. The judgment was, apparently, unfavourable to the applicant; and he is aggrieved by it. It seems that the applicant desires to appeal against it but he is already out of time.
  5. It seems that the Criminal Petition was related to an on-going criminal case, to wit, Kakamega Chief Magistrate’s Court Crim. Case No. E092 of 2022. It is not clear what that relationship is but I can only assume that the applicant is probably the accused person in the criminal case. The applicant wants that criminal trial stayed until the appeal he intends to file herein is heard and determined.
  6. There are several problems with the application as drawn even if I were to ignore its “omnibus” nature. The most significant one is that the judgment in Criminal Petition No. E003 of 2022 which the applicant seeks to appeal against is not attached to the supporting affidavit. It is unclear to me what the nature of the case was. I am also unable to determine if, in fact, there was any such judgment on that date. I say so because in his submissions, the applicant refers to another “ruling” that was delivered in September, 2023. It is not clear whether that was a “ruling” with respect to a post-judgment application. Even more confusing, the submissions speak of orders given on June 2, 2022. I should say that all efforts to trace the judgment from the database of Kenya Law Reports have, also, been unsuccessful.
  7. I merely raise all this to point out why I cannot exercise my discretion under Rule 4 of the [Court of Appeal Rules](#) to grant an order for extension of time with the application in its current state. The applicant is well advised to furnish the Court, in a subsequent application, with more relevant information to enable the Court to exercise its discretion from a position of knowledge. At the very minimum, the applicant should supply a copy of the judgment intended to be appealed against; other relevant rulings from the superior court; and the charge sheet in the related criminal matter.
  8. As things stand, however, the application is for dismissing, which I hereby do. I make no order as to costs.
  9. Orders accordingly.

**DATED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**JOEL NGUGI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

