



**Kamichar v Republic (Criminal Application E035 of 2022)  
[2023] KECA 559 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 559 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CRIMINAL APPLICATION E035 OF 2022  
MSA MAKHANDIA, JA  
MAY 12, 2023**

**BETWEEN**

**ELIZABETH WAMBUI KAMICHAR ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An application for extension of time to lodge an appeal from the ruling of the High Court of Kenya (Lesiit, J.) dated 10th November, 2020 in Nairobi HCCRA No. E024 of 2020)*

**RULING**

1. Elizabeth Wambui Kamichar “the applicant” was charged with the offence of obtaining registration by false pretenses contrary to section 320 of the *Penal Code* and upon conviction she was sentenced to three (3) months imprisonment without an option of a fine. On appeal, Lesiit, J. allowed the appeal on sentence and reduced it to the term so far served. However and according to the applicant, the High Court did not determine the appeal on conviction. It is this refusal that the applicant wishes to appeal against.
2. Though the applicant filed notice of appeal on time, she was however unable to file a record of appeal in time as required by this court’s rules.
3. Accordingly, the applicant has lodged this notice of motion seeking that the time to lodge the record of appeal be extended and/or the record of appeal filed out of time be deemed as properly filed with leave of the court. He explains that the delay in filing the record of appeal was occasioned by the communications between counsel for the applicant and the High court regarding why the appeal on conviction was not considered as well as the need to transfer the appeal to Kiambu High Court for hearing and determination. By the time these exchanges were exhausted, time limited for the filing of the record of appeal had long gone.



4. The Office of the Director of Public Prosecutions when served with the application, responded by a letter dated March 13, 2023 stating that it was not opposed to the application.

5. The extension of time by this court is provided for under rule 4 of the Court of Appeal Rules inter alia:

“The court may, on such terms as it thinks just, by order extend the time limited by these rules, or by any decision of the court or of a superior court, for the doing of any act authorized or required by these rules, whether before or after the doing of the act, and a reference in these rules to any such time shall be construed as a reference to that time as extended.”

6. In exercising its discretion whether or not to extend time, the court must be alive to several key considerations namely:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- v. Whether there will be any prejudice suffered by the respondents if the extension is granted; and
- vi. Whether the application has been brought without undue delay.

See *Salat v Independent Electoral & Boundaries Commission & 7 others* [2014] KLR-SCK.

7. Ideally, the applicant ought to have filed his appeal by January, 2021. I take note though that upon realizing that there was delay in filing the appeal, the applicant acted promptly and filed this application in November, 2022. Given the circumstances, including the constraints the applicant has alluded to and the fact that the respondent does not oppose the application, I am inclined to allow the application.

8. Consequently, I allow the application with the result that the record of appeal be and is hereby deemed as having been duly lodged and served upon payment of the requisite court fees.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2023.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

*I certify that this is a True copy of the original*

*Signed*

**DEPUTY REGISTRAR**

