



**Gichane v Republic (Criminal Appeal (Application)
E022 of 2023) [2023] KECA 956 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KECA 956 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CRIMINAL APPEAL (APPLICATION) E022 OF 2023
S OLE KANTAI, JA
JULY 28, 2023**

BETWEEN

CHARLES KINUTHIA GICHANE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to appeal out of time from the Conviction and Sentence from the Judgment of the High Court of Kenya at Nairobi (E.N. Maina, J.) dated 14th July, 2022 in ACEC Appeal No. 19 of 2019)

RULING

1. The applicant Charles Kinuthia Gichane has by Motion said to be brought under various provisions of law applied that I be pleased to grant him leave to file a record of appeal out of time. He says that the High Court delivered a Judgment against him on July 14, 2022; that after delivery of Judgment he immediately applied for certified copies of Judgment and the Court's proceedings which were not supplied by the High Court within the time specified by The Court of Appeal Rules for filing an appeal; that he desires to appeal and had filed Notice of Appeal; that failure to be granted leave to appeal out of time will deny him an opportunity to pursue justice and would render the intended appeal nugatory and that the delay in bringing the application is not inordinate. The Motion is supported by grounds on its face and a supporting affidavit of his lawyer Purity Ndanu Mutua where the facts I have enumerated are repeated. It is also stated that the applicant was charged with the offence of fraudulent disposal of public property under the [Anti-Corruption and Economic Crimes Act](#) No. 3 of 2003; Judgment was delivered by the trial Court on May 13, 2019 where he was convicted and duly sentenced to pay a fine or serve imprisonment in default. An appeal to the High Court was dismissed in a Judgment delivered on July 14, 2022; the applicant filed a Notice of Appeal and applied for proceedings of that Court for purposes of appealing to this Court; proceedings were supplied on June



22, 2022 which was outside the time allowed for filing an appeal; that there is an arguable appeal with high chances of success and that the application is brought without delay.

2. I note that the respondent was served with a hearing notice for today at appealsdivision@odpp.go.ke on June 27, 2023 at 1.07 p.m. I have not seen a replying affidavit from that office.
3. I have seen and considered written submissions filed by the applicant through his lawyers Aminga, Opiyo, Masese and Company Advocates.
4. The principles that apply in an application of this nature were recently summarized by a single Judge of this Court in the case of *Josephat Waswa Nyongesa v Republic* [2021] eKLR as follows:

"The case of *Leo Silla Mutiso v Rose Hellen Wangari Nairobi Civil Application No 251 of 1997* confirmed that the decision on whether to extend time for appealing is essentially discretionary taking into account length of delay and reason for the delay. It is clear therefore that the court has the ultimate discretion in allowing or disallowing an application for extension of time as long as it deems the terms thereof as just."

5. In considering an application for extension of time, several key issues are to be considered as was pointed out in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* Supreme Court Application No. 16 of 2014[2014] eKLR, and I take cognisance of the fact that extension of time is an equitable remedy that is only available to a deserving party at the discretion of the Court. Further, a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court, and the court needs to consider whether there is a reasonable reason for the delay. In addition, the court needs to consider whether the application has been brought without undue delay, and due regard must be taken as to whether there will be any prejudice suffered by the respondents if the extension is granted"
6. The applicant says in the Motion before me that his first appeal was dismissed in July, 2022 and he immediately filed a Notice of Appeal and applied for copies of proceedings and Judgment which were not supplied to him on time to meet the timelines in our rules for filing an appeal. He thinks that his intended appeal has merit. He says that he did all that was required to file an appeal but was caught up by delay in the High Court furnishing him with copies of proceedings and Judgment to allow him to appeal.
7. I have considered the motion and in applying the principles in *Josephat Waswa Nyongesa (supra)* case I am satisfied that the applicant is deserving of my exercise of discretion in his favour. The Motion has merit and I allow it. Let the applicant file Record of Appeal within fourteen days of today. I make no order on costs.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY, 2023.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

