



REPUBLIC OF KENYA



KENYA LAW
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**Owino v Republic (Criminal Application E296 of 2022)
[2023] KECA 1078 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1078 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPLICATION E296 OF 2022
M NGUGI, JA
SEPTEMBER 22, 2023**

BETWEEN

SAMWEL DALON OWINO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for extension of time to file an appeal from the judgment of the High Court of Kenya at Kisumu, (Chemitei, J) dated 6th May, 2013 in HCCR Petition No. 156 of 2011)

RULING

1. In his application dated September 22, 2022, the applicant seeks extension of time to file his appeal, and he also prays that his notice of appeal be deemed as properly filed.
2. In his affidavit in support of the application, he deposes that he was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* and sentenced to 25 years imprisonment. He avers that he has filed a notice of appeal but due to poverty, he has been unable to file the record of appeal to this court. It appears from the annexures to his application that his appeal to the High Court, being HCCR No. 156 of 2011, was dismissed by the High Court (Chemitei, J) on May 6, 2013.
3. The respondent opposes the application by submissions dated July 24, 2023. It is the submission of learned Senior Principal Prosecution Counsel that the delay in seeking extension of time is inordinate and that no satisfactory explanation has been given. He notes that the decision that the applicant seeks to appeal against was delivered on May 6, 2013 and the application was filed on December 7, 2022.
4. Under Rule 4 of the Rules of this *Court* 2022, the power to extend time is discretionary and is exercisable, as submitted by the respondent, upon a satisfactory explanation being given for the delay in filing an appeal, as in this case, or for the doing of any other act under the Rules.



5. It is correct that there has been a delay of 9 years in seeking extension of time. The explanation given is that the applicant has contacted his family but has received no assistance. He avers that due to poverty, he was not able to file his record of appeal to this court.

6. Section 349 of the Criminal Procedure Code provides as follows with respect to the filing of appeals:

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against.

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellants or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.

7. Rule 61 of the Court of Appeal Rules 2022 (which is in the same terms as Rule 59 of the Court of Appeal Rules 2010 under whose provisions the applicant should have filed his appeal) provides that:

1. A person who desires to appeal to the court shall give notice in writing... within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

8. The decision against which the applicant seeks to appeal was delivered on May 6, 2013, that is more than ten years ago. He did not file a notice of appeal which, as the Rule states, would have instituted his appeal before this court. The present application was filed on September 22, 2022, nine years after the judgment. The reason advanced for the delay which, from whichever angle one looks at it is inordinate, is that his family did not assist him and he was poor and could not afford to file the appeal.

9. Having considered the length of the delay and the reason advanced to explain it, I am not satisfied that there is a satisfactory reason for the inordinate delay of almost ten years. There is no requirement for a convicted person serving a sentence of imprisonment to expend funds to file a record of appeal, let alone a notice of appeal. All that is required of him is to file a notice of appeal within fourteen days, after which the High Court Registry prepares the record of appeal. At the very least, he would have been expected to file an application such as is presently before me within reasonable time, not ten years after the judgment he seeks to appeal against.

10. It seems to me that the present application is an afterthought, brought too late in the day. I accordingly find that it is devoid of merit, and I decline to exercise the discretion granted under Rule 4 of the Court of Appeal Rules to extend time for the applicant. The application dated September 22, 2022 is therefore dismissed for want of merit.

DATED AND DELIVERED AT KISUMU THIS 22ND DAY OF SEPTEMBER, 2023

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is

a true copy of the original

DEPUTY REGISTRAR

