Republic v Nathan (Criminal Application E280 of 2022) [2023] KECA 1454 (KLR) (24 November 2023) (Order)

Neutral citation: [2023] KECA 1454 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPLICATION E280 OF 2022

JM NGUGI, JA

NOVEMBER 24, 2023

BETWEEN

REPUBLIC ..... APPLICANT

AND

SAMWEL MOGAKA NATHAN ..... RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Nyamira (Njagi, J.) dated 4th April, 2022 in HCCRA No. E002 of 2020)

ORDER

1. The application herein is dated October 5, 2022. It is an application by the State for extension of time to file an appeal against the judgment delivered by the High Court of Kenya sitting in Nyamira which was delivered on April 4, 2022. In the judgment, the learned Judge reversed the decision of the magistrate's court and acquitted the respondent. The State believes the decision was wrong and will have serious implications for the victims of the alleged crime hence its decision to appeal.

2. The application was listed for hearing before me on July 23, 2023. The applicant filed written submissions. The respondent did not file any submissions. It soon became obvious that the respondent was never served with the hearing notice. Indeed, they were absent during the case management hearing before the Honourable Deputy Registrar raising questions if they were ever served with the application itself. The hearing notice was sent to Kibos Maximum Prison. However, the respondent is not an inmate having been acquitted by the High Court.

3. It would be unfair to the respondent for this application to proceed in their absence when they have not been served. Consequently, I direct the applicant to obtain a case management date before the Deputy Registrar and then to serve both the application and the mention date before the Deputy Registrar on the respondent; and then to duly file an affidavit of service. Thereafter, the application can be relisted for hearing.

4. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF NOVEMBER, 2023.

JOEL NGUGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR