



Case Number:	Criminal Application NAI 17 of 1984
Date Delivered:	10 Dec 1984
Case Class:	Criminal
Court:	Court of Appeal at Nairobi
Case Action:	Ruling
Judge:	Zakayo Richard Chesoni
Citation:	Kipng'etich v Republic[1984] eKLR
Advocates:	Mr. Odero for Applicant Miss Mbarire for Respondent
Case Summary:	<p><b>Kipng'etich v Republic</b></p> <p><b>Court of Appeal, at Nairobi</b></p> <p><b>December 10, 1984</b></p> <p><b>Chesoni Ag JA</b></p> <p><b>Criminal Application No NAI 17 of 1984</b></p> <p><i>(Appeal from the High Court at Nairobi, O'Kubasu J)</i></p> <p><b>Appeal</b> - extension of time - to file appeal - application for - litigant taking necessary steps to instruct advocate - failure of advocate to file appeal in time - litigant instructing another advocate - application for extension of time made after 3 months - whether litigant entitled to extension of time.</p> <p>The applicant, whose appeal was dismissed by the High Court, filed an application three months later asking the Court of Appeal for an extension of time within which to file a notice of appeal. In her affidavit in support of the applicant's application, his wife deponed that she had</p>

	<p>instructed an advocate about a month after the dismissal of the appeal by the High Court but she later discovered that that advocate had taken no action in filing and prosecuting the appeal. She further stated that she instructed another firm of advocates who had filed the application for extension of time.</p> <p><b>Held:</b></p> <ol style="list-style-type: none"> <li>1. It had been satisfied that the applicant had taken the necessary steps to prosecute his appeal but she was let down by his former advocate.</li> <li>2. The delay in filing the appeal was not inordinate and as the matter involved the liberty of a subject, the court would exercise its discretion in favour of the applicant.</li> </ol> <p><i>Application allowed.</i></p> <p><b>Cases</b></p> <p>No cases referred to.</p> <p><b>Statutes</b></p> <p>No statute referred to.</p> <p><b>Advocates</b></p> <ol style="list-style-type: none"> <li>1. <i>Mr. Odera</i> for Applicant</li> <li>2. <i>Miss Mbarire</i> for Respondent</li> </ol>
Court Division:	Criminal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed.
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-

Sum Awarded:

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**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(Coram: Chesoni Ag JA)**

**CRIMINAL APPLICATION NO. NAI 17 OF 1984**

**KIPNG'ETICH .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal from the High Court at Nairobi, O'Kubasu J)*

**RULING**

The applicant's appeal was dismissed by the High Court (O'Kubasu J) on August 3, 1984. His wife consulted him in September, when he requested her to instruct a lawyer to prefer a second appeal to this court. In her affidavit in support of this application for extension of time to file the notice of appeal, Susan Wangari Kipng'etich (his wife) says that she instructed Mr. Kositany, advocate, in September 1984. However, she later discovered that Mr. Kositany had taken no action to file and prosecute the appeal and on November 9, 1984 she instructed Odero and Orieyo Advocates, who filed this application on November 9, 1984.

Mr. Odero has submitted that the applicant should not be made to suffer for the omission of his former advocate. Miss Mbarire for the respondent chose to leave the matter to my discretion.

I am satisfied that the applicant took necessary steps to prosecute his appeal but he was let down by his former advocate. The delay is not inordinate and the matter involves the liberty of a subject. I would in the circumstances exercise my discretion in the favour of the applicant. Consequently, the application is allowed and the applicant shall file the notice of appeal within 14 (fourteen) days from the date of this order.

So I order.

**Dated and delivered at Nairobi this 10th day of December, 1984.**

**Z.R CHESONI**

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**AG... JUDGE OF APPEAL.**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**



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