



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT VOI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. E126 OF 2021**

**DANSON MWAKOMA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant Danson Mwakoma was convicted in Voi Chief Magistrates Court CR. Case No. 302 'A' of 2019 (formerly Wundanyi CR. Case No. 147/2019) with the offence of malicious damage to property contrary to section 339(1) (b) of the penal code and it was ordered that Applicant compensates the Complainant for the damaged indigenous trees valued at Kshs.94,000/= where he serves probation term of 6 months.
2. The sentence was stayed through orders made in Miscellaneous CR. Application No. E003 of 2021 to allow the Applicant lodge appeal against conviction and sentence. The Applicant now seeks through application dated 6/08/2021 that leave be granted for him to appeal out of time.
3. Mr. Joel Kibet Chirchir prosecuting counsel opposed the application vide Replying affidavit shown on 12<sup>th</sup> August 2021. The Applicants judgment was delivered on 30<sup>th</sup> day of September 2020 and sentence passed on 2/10/2020 placing the applicant on probation while making payments in instalments to compensate the Complainant.
4. According to Applicant's counsel supply of proceedings was made and paid for vide letters dated 27/11/2020 and 4/11/2020 but it was not until late June 2021 that the same were supplied.
5. The Applicant averred that delay in lodging appeal was beyond his immediate personal control as typing and certification of proceedings was delayed by the lower court registry.
6. It is not denied that the Applicant receipt certified copy of the proceedings and judgment on 22<sup>nd</sup> June 2021. In consideration that stay of the sentence was granted to enable the Applicant to lodge appeal against conviction and sentence this court finds that the delay in filing the same is explained and in any case is not inordinate. The Application to dodge appeal out of time is allowed.
7. The Applicant granted 7 days to pay for the filing of draft petition of appeal annexed to the application and prosecute the appeal expeditiously or as per directions of the trial judge since proceedings have already been prepared.

**DATED, SIGNED AND DELIVERED BY EMAIL THIS 13TH DAY OF JANUARY, 2022.**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

Court: Same to be transmitted to Voi Court and Notice to be issued of Ruling to parties.

**IN THE PRESENCE OF:**

**OGWEL – COURT ASSISTANT**

**ADVOCATE FOR APPLICANTS – MR. MWANYUMBA ADVOCATE – NO APPEARANCE**

**ADVOCATE FOR RESPONDENTS – MS. KAMBAGA HOLD BRIEF FOR SIMBI FOR STATE**

**HON. LADY JUSTICE A. ONG’INJO**

**JUDGE**