



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

MISC. CR. APPLICATION NO. E009 OF 2020

NIXON TUWEI KIPROP.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

**Leave to file appeal out of time**

[1] The applicant filed two applications on 20<sup>th</sup> November, 2020; a Notice of Motion and a Chamber Summons. He also filed a Petition of appeal. From the applications and the affidavit in support, it is clear he is seeking for leave of the court to file appeal out of time. The reasons he has given for not filing appeal in time are: -

**i) That, although he was aware that his appeal is already delayed, he was not able to file one, for after conviction and sentence, he was unable to raise litigation fee to hire an advocate.**

**iii) Nonetheless, he believes that his appeal has high chances of success, so it should be heard and determined.**

[2] In his oral submissions in court, he stated that he was sentenced in 2014. At one time, he stated that he has never filed any appeal. At another, he stated that his appeal disappeared and was never called in court. He further stated that he has suffered in prison yet it is the court which delayed his file. He therefore asked the court to allow his application to file appeal out of time.

[3] The prosecution counsel, M/S Torosi opposed the request. She took the view that there has been inordinate delay. Yet, no reason was advanced to explain the delay. She stated that the applicant slept on his rights. According to her, litigation should come to an end. Thus, she urged the court to dismiss the request for enlargement of time.

**ANALYSIS AND DETERMINATION**

[4] According to section 349 of the Criminal Procedure Code (Cap 75) Laws of Kenya

**“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 appellant 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.”**

[5] Therefore, the applicant must show good cause why he did not file appeal in time. Of central consideration is inability to obtain the judgment and proceedings in time. The applicant has not established that inability to obtain judgement and or proceedings prevented him from filing appeal in time. He did not even state that he so applied for judgment or proceedings. He merely stated that he was not able to raise litigation fee to hire an advocate. Litigation fee to hire an advocate is not the issue here as he would still have applied for proceedings or file appeal in person, and as the case may be, at no cost just as he filed the applications before me.

[6] I do note also that he filed another application, to wit, NAROK HC MISC. CR APPL. NO 41 OF 2018 seeking retrial of the case. He cannot therefore claim now that he was not able to file appeal because he could not raise advocate’s fee.

[7] In the absence of explanation, the delay herein is inordinate and inexcusable. I also think that the applicant is abusing the process of

court.

[8] The foregoing suggests one thing; that the applicant has not established good cause why he did not file appeal in time. In the circumstances, I am not persuaded to exercise my discretion in his favour. In the upshot, I dismiss applications for leave to file appeal out of time.

**Dated, signed and delivered at Narok through Teams Application this 25<sup>th</sup> day of January 2021**

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**F. GIKONYO**

**JUDGE**