



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION- MILIMANI COURT

MISC. CRIMINAL APPLICATION NO. 510 OF 2019

ZAKAYO SHIKABI SHABUKAYA.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. By way of Notice of Motion filed herein on the 21<sup>st</sup> November, 2019, the Applicant seeks to appeal out time. In an affidavit in support of the Application, the applicant avers that he was unable to appeal due to health problems, and, that the appeal has high chances of succeeding.
2. The Application is unopposed.
3. **Section 349** of Criminal Procedure Code provides thus:

*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.*

4. The Applicant herein was convicted for the offence of defilement and sentenced to life imprisonment on 1<sup>st</sup> February, 2018. In his oral application he alleges that he filed an application/ appeal but got no response from the court. A search in the system did not materialize in any other alleged application.
5. From the allegation of the Applicant that was not opposed by the Respondent, that he suffered from ill health and that he attempted to exercise his right of appeal, this is a good cause for the court to grant the relief sought.
6. In the premises, I grant the Applicant fourteen (14) days within which to appeal.
7. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MAY 2021.**

**L .N.MUTENDE**

**JUDGE**