



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MISC. CRIMINAL APPLICATION NO. E014 OF 2020

JOSEPH MUGAMBI.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. The applicant was on the 22/01/2019 convicted of the offence of defilement contrary to Section 8 (1) as read with 8(b) of the Sexual Offences Act.
2. He says that he desired to apply but was unable to file the petition of appeal within the stipulated time because he was not supplied with the judgment in time. He further says that he did file an application for leave to appeal out of time during the month of September, 2019 but that application got lost or was never heard. He however did not have a copy of the details of that application.
3. While he asserts that the delay was occasioned by late supply of the judgment, no disclosure is made as to when the same were availed nor has a copy thereof been availed to show when the same was certified to enable the court confirm how long it took the same document to be prepared and availed to the applicant.
4. The application was opposed by the prosecution by the grounds of opposition dated and filed on the 19/7/2021 in which the applicant is faulted for failure to demonstrate that the delay was by late supply of the judgment and not his own fault and that the delay was inordinate hence application is merely an afterthought, incompetent, frivolous, lacks merit and an abuse of the court process.
5. The respondent in addition filed submissions essentially reiterating the grounds of opposition and cited to court Black's Law dictionary on what amounts to sufficient reason to explain delay and invite the discretion to enlarge time.
6. It remains the law that where timelines are circumscribed by the law and one seeks to have such time limit enlarged, such a person is obligated to give reasons to the satisfaction of the court why he was not able to take the desired step within the time limited. The Supreme Court in *Salat Vs IEB (2014) eKLR* reiterated the law in the following words-;

From the above case law, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.
7. In this matter it is agreed by both sides that the judgment sought to be appealed against was delivered on the 20/01/2019. The law under section 349 of the Criminal Procedure Code mandated the applicant to file any desired appeal within 14 days.
8. That duration lapsed without any step being taken until this application was filed on the 30/10/2020. The reason advanced is that the court did not avail to him the judgment in time. In making that assertion no evidence was availed on the attempt made at asking for the judgment. In fact he did not even avail to court the copy he says was provided late. In brief there is no evidence that the delay was caused by failure by the court to avail the judgment. Where no evidence is availed, the court is unable to say whether the delay was justifiable or just indolent.
9. In addition, the period between the date of judgment and the making of the application adds to some 22 months. Without an account of what was done or not done during the period, one cannot term the delay otherwise than inordinate.
10. With inordinate delay and dearth of explanation, the court has nothing to act upon in exercising its judicial discretion. The consequence is that the application cannot succeed but must fail.
11. It is therefore dismissed.

Dated, signed and delivered at Meru this 9th day of August 2021

Patrick J.O Otieno

Judge

In presence of

Mr. Maina for the state

Applicant in person

Patrick J.O Otieno

Judge