



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

MISC CRIMINAL APPLICATION NO. 8 OF 2019

(CORAM: F.M. GIKONYO J.)

(Being an intended appeal from the judgement on

conviction and sentence in criminal Case (SOA) No. 638 of 2009

at Narok SPM's Court presided over by Hon. W.N. Njage (S.P.M.)

JACKSON NGINO MASERA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

R U L I N G

Leave to appeal out of time

[1]. Before me is a Notice of Motion brought pursuant to **Section 349 of the Criminal Procedure Code, Cap 75 of the Laws of Kenya** for leave to appeal out of time. The application is based on the grounds set out in the application and the applicant's affidavit in support thereof.

[2]. The applicant was charged with, convicted and sentence for the offence of Defilement contrary to Section 8(4) of the Sexual Offences Act. No. 3 of 2006 in Narok SOA No. 638 of 2009. He stated that he did not enter appeal within 14 days because he has not been supplied with the original trial records and judgment.

[3]. When the matter came up for mention on 28th July, 2021, Mr. Karanja for the State opposed the application on the basis that if the application is based on **Muruatetu** it is a perfect candidate for dismissal following directions by the Supreme Court on the matter. The applicant prayed for reduction of sentence.

ANALYSIS AND DETERMINATION

[4]. I do note that the appellant argued substantive issues of the appeal, yet, his application is for enlargement of time to file appeal. It is not clear what the applicant wants from the court. That notwithstanding, court's power to extend time for filing appeal is provided for under Section 349 of the Criminal Procedure Code as follows:

‘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]. Extension of time to file appeal out of time is to be granted only on good cause being shown by the applicant. Good cause is defined by **Black's Law Dictionary 10th Edition** as a legally sufficient reason.

[6]. The law, section 349 of the CPC in particular, has identified as good cause, *inter alia*, failure to enter the appeal within the prescribed time due to the inability of the applicant or his advocate to obtain a copy of the judgement or order appealed against, and a copy of the record, within a reasonable time of the applying to the court therefore.

[7]. I am aware of Article 50 (5) (b) of the Constitution, which provides, that:

“The accused has the right to a copy of the record of the proceedings within a reasonable period after they are concluded, in turn for a reasonable fee as prescribed by law.”

[8]. In the present case, other than the applicant merely stating that he did not file the appeal within time because he was not supplied with the trial court’s record, he did not provide any information- say request for judgment or proceedings, orally or otherwise- to back his claim. Accordingly, the Applicant has not shown that the failure to file appeal in time was due to inability to obtain copy of judgement or proceedings.

[9]. The facts of the case excite only one reasonable conclusion; that, considerable time has passed by and absence of reasonable explanation only makes the delay inordinate, and inexcusable. In light thereof, I reject his application for leave to appeal out of time. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 19TH DAY OF OCTOBER, 2021

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F. GIKONYO M.

JUDGE

In the presence of:

1. Karanja for DPP
2. The applicant in person
3. Mr. Kasaso – CA

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F. GIKONYO M.

JUDGE