

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 53 OF 2019

ASITWEHY ISSACK ELIAS.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with offence of entering Kenya without passport or permit contrary to section 34(1) as read with section 53(1)(j) (2) of the Kenyan Citizenship and Immigration Act No. 12 of 2011.
2. He pleaded guilty and was thus convicted and sentenced to a fine of Kshs. 200,000/= and in default to serve 5 years' imprisonment on 30/6/2017.
3. On 30/7/2019 he lodged a motion seeking to file appeal out of time. His only ground of delay of 3 years is that he prepared documents within time but due to distance as from Mandera he could not lodge same within the prescribed period.
4. The State opposes the application on grounds that the delay is inordinate and there are no sufficient grounds adduced to support or explain the same.
5. Under section 349 of the Criminal Procedure Code Cap. 75 Laws of Kenya an appeal is supposed to be filed within 14 days from the date of the order or sentence appealed against save where the supply of record of appeal is delayed.
6. Provided that a court to which the appeal is made may for good cause admit the appeal after the period of 14 days has elapsed and shall also admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by inability of appellant or his advocate to obtain a copy of record, within a reasonable time of applying to the court thereof.
7. The applicant has not satisfied the above prescription by his explanation. He only says that Mandera was far thus could not file appeal in time. He does not say when he was taken to Garissa G.K. Prison to enable court compute time from that date.
8. He has also not stated that the sentence was unlawful but only harsh and excessive. On a plea of guilty, you cannot lodge an appeal against sentence unless same is unlawful.
9. **Thus, the court finds no merit in the application and same is dismissed.**

DATED, DELIVERED AND SIGNED AT GARISSA THIS 27TH DAY OF MAY, 2020.

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C. KARIUKI

JUDGE