



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**CRIMINAL MISC. APPLICATION NO. 48 OF 2019**

**ADAN GALGALO WACHO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant was charged with offence of being unlawfully present in Kenya contrary to section 53(1) (j) as read with section 53(2) of the Kenyan Citizenship and Immigration Act No. 12 of 2011.

He pleaded guilty and was sentenced to a fine of Kshs.200,000/= in default to serve 5 years imprisonment on 6/7/2017.

He lodged application to file appeal out of time on 30/7/2019 thus a delay of 3 years.

In his affidavit he avers that he prepared documents n time but due to distance he could not lodge within the prescribed period. It is only upon being transferred to Garissa G.K. Prison that he managed to file the same documents.

The State opposes the application as there is in ordinate delay in lodging the same application.

The provisions of section 349 of the Criminal Procedure Code prescribes the threshold of lodging the appeal out of time. The time for filing an appeal and the power to extension of time for appeal is provided for under section 349 of the Criminal Procedure Code as follows:

**“349. 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.”**

An applicant for extension of time to file an appeal must, therefore, demonstrate a good cause for extension of time to appeal.

The applicant does not meet the same threshold. His reasons for delay do not indicate when he was taken to Garissa G.K. Prison. His intended appeal is premised on what he calls harsh and excessive sentence.

On a plea of guilty the sentence can only be impugned on grounds of illegality see s 348 CPC.

Thus, the court finds no merit in the application and same is dismissed.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 27<sup>TH</sup> DAY OF MAY, 2020.**

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**C. KARIUKI**

**JUDGE**