

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL MISC. APPLICATION NO. 18 OF 2017

JOSEPH GITAU NDUNGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant was charged with being in possession of cannabis sativa contrary to section 3(1) 2(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act No. 4 of 1994.
2. He pleaded guilty and was fined Kshs.1 million in default to serve 20 years' imprisonment on 19/9/2014. He was informed his rights of appeal.
3. He lodged his documents seeking leave to appeal out of time in August 2017. It was 3 years late in lodging the application. He claims to have lodged appeal within time but High Court Registry never responded.
4. The State opposes the application as the reasons adduced are not sufficient to warrant court exercise discretion in extension of time of filing appeal out of time.
5. Section 349 of the Criminal Procedure Code states the appeal to be filed within 14 days from the date of order or sentence to be challenged save where the supply of record of appeal is delayed.
6. There is no evidence applicant lodged appeal as alleged within time in the High Court Registry. He does not even state the date he purportedly lodged the appeal.
7. It is trite law each case ought to be considered according to its merits; and it is a well settled principle that the decision on whether or not to extend time for appealing is discretionary; the law also requires that the court must be satisfied that the failure or delay be attributed to inability by either the appellant or his advocate in obtaining the proceedings or judgment within reasonable time of applying; it is noted that the appellant was acting in person and was also incarcerated and therefore may not have been able to obtain the requisite documents to enable him to move forward;
8. He claims to have lodged appeal within time but High Court Registry never responded. The same allegation has not been rebutted.
9. The court takes circumstances of the applicant case, the nature of offence, sentence meted out and the fact that he was un-represented.
10. The court finds merit in the application and allows the same. Thus, the court makes the following orders;

(i) The petition shall be lodged and served within 21 days.

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

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C. KARIUKI

JUDGE