

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC MISC CR APPL. NO. 70 OF 2018

GEOFFREY KYALO MATIVO.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with an offence of obtaining money by false pretence contrary to Section 313 of the Penal Code.
2. Particulars being that on 21st and 23rd August, 2017 at Malili Shopping Centre, in Mukaa Sub-County within Makueni County, with intent to defraud obtained from JEREMIAH LESARON the sum of Kshs. 72,000/= by falsely pretending to lease him a portion of land for grazing to JEREMIAH LESARON a fact they knew was false.
3. The Applicant pleaded not guilty and matter went into a full trial. He was later found guilty convicted and after mitigation sentenced to pay a fine of Kshs. 100,000/= in default serve 2 years imprisonment on 02/02/2018.
4. After 7 months also on 17/09/2018 the Applicant lodged Application in which he sought to file appeal out of time.
5. He relied on the ground that his unnamed relative promised to hire an advocate to pursue appeal but he realised that they lacked fees to do so.
6. The provisions of Section 349 CPC allows extension of time to lodge appeal out of time if Applicant demonstrate that the delay in supply of judgement or order occasioned the lateness in filing an appeal within time.
7. None of the above grounds stipulated above is cited as the reason for delay in filing the appeal within 14 days as required by the law.
8. **The delay of 7 months also is not explained. Thus the court declines to grant prayers sought.**
9. **Application is thus dismissed.**

SIGNED, DATED AND DELIVERED THIS 28TH DAY OF JANUARY, 2019 IN OPEN COURT.

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HON. C. KARIUKI

JUDGE