

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL APPEAL NO. 37 OF 2017

GABRIEL A. SHIBUTSE.....APPLICANT

VERSUS

REPUBLIC.....APPELLANT

(Being an appeal from original conviction and sentence in criminal Case No. 669 of 2014 at Chief Magistrate's Court in Kiambu)

RULING

1. The Appellant/Applicant, **Gabriel Shibutse** was tried and convicted before the Chief Magistrate's Court Kiambu, in **Criminal Case No.669 of 2014**. He had been charged with three counts, namely, Making of a document without authority contrary to section 357(A) of the Penal Code, Forgery contrary to Section 349 of the Penal Code and Uttering a false document contrary to Section 353 of the Penal Code. The offences related to a decree purported to have been issued by the High Court. He was placed on probation for 2 years at the close of the trial, in May 2015. His appeal to this court was lodged by a Petition filed on 15th March 2017. It is not clear whether he had obtained leave to file the Petition of Appeal out of time.

2. On the first hearing date which fell on 21st November 2017 the Appellant was absent. Similarly, he did not attend court on 22/2/18. The court (**Ngugi J**) made an order to the following effect:

“This being the 2nd time that the matter is coming up – and being satisfied that the Appellant was aware of today's date, I hereby proceed to dismiss the appeal for non-attendance.”

3. About a month later, the Applicant reappeared with the motion which is the subject of this ruling, and filed on 21st March 2018 seeking reinstatement of the dismissed appeal. The main grounds relied on are that the Appellant's failure to attend the court on 22nd February 2017 was due to the fact that he was ailing. Attached to his affidavit is a sick-off form and prescription purportedly issued on 22nd February 2018 by Primed Medical Centre. The application was opposed by the DPP through **Mr. Maatwa**. He asserted that no proper grounds had been made out to justify the reinstatement of the appeal.

4. The court has considered the history of the matter and material canvassed in respect of the motion. Notably, the Appellant took two years to file his petition of appeal, even though he was serving a probation term, thus not incarcerated. Having filed the appeal on 15th March 2017, it was not until September 2017 that he set down the appeal for hearing on 21.11.17. He did not attend the hearing and has not attempted to explain his absence on that date.

5. His failure to attend on the subsequent date is attributed to alleged illness on the morning of the hearing of the appeal. There is no explanation offered for the fact that it took the Applicant a further month to lodge the present application. The court is not persuaded that the Applicant is being candid. Nor has he demonstrated any sense of urgency as to the filing and prosecution of his appeal. The court cannot afford to allow parties to file and prosecute cases at their leisure at a time when courts are inundated with high volumes of litigation. The application to reinstate the dismissed appeal is in my considered view unmerited, and must be dismissed.

Orders accordingly.

DELIVERED AND SIGNED AT KIAMBU THIS 25TH DAY OF JULY 2019

.....

C. MEOLI

JUDGE

In the presence of:

The Applicant

Mr. Mokua for the DPP

Court Assistant - Kevin