



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 50 OF 2018

YUSSUF MOHAMED SULEIMAN.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTION

RULING

1. The appellant was charged with offence of office breaking contrary to Section 304 (1) (b) and stealing contrary to Section 279 (b) of the Penal Code. Particulars of offence are that on the nights of between 11th and 13th days of December, 2018 at Wajir Township location in Wajir East Sub-county within Wajir County jointly with another not before court broke and entered Wajir Social Development Office and stole from therein a trophy valued at Kshs.30,000/= and eighty (80) Inua Jamii ATM cards the properties of Wajir Social Development Office.
2. Count II; Handling suspected stolen properties contrary to Section 322 (1) (2) of the Penal Code. Particulars are that on the 23rd day of December, 2017 at Wajir Police Station report office in Wajir East Sub-county within Wajir County, otherwise than in the course of stealing dishonestly received twenty seven (27) Inua Jamii ATM cards knowing or having reason to believe them to be stolen properties.
3. He pleaded not guilty and matter went into full trial. He was convicted and sentenced to serve on housebreaking 5 years and stealing 3 years to run concurrently.
4. He was accused No. 2 in the matter.
5. Being aggrieved by the aforesaid decision, he lodged instant appeal and set out the various grounds which he listed in his handwritten petition as amended. However, the original appeal was lodged on 10/9/018. The conviction and sentence was on 20/3/018.
6. From 20/3/018to 10/9/018 is a span of 6 months or thereabout in lateness. He ought to have lodged appeal 14 days after conviction and sentence.
7. His 23/7/019 application to extend time is supported by affidavit which he said he was supposed to file appeal within 14 days. However, only when he was transferred to Garissa Prisons, prisoner's legal advised him of his right to appeal.
8. I have considered the application on enlargement of time and rival submissions by both sides. The law on enlargement of time is clearly outlined under section 349 proviso therein which states as follows:

“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 applicant or his advocate to obtain a copy of the judgement or order appealed against, and a copy of the record, within a reasonable time of the applying to the court therefore.”

9. The reading of the provision to section 349 of the Criminal Procedure Code lays emphasis on the offender/accused to obtain a copy of the judgement and or record within a reasonable time from the time of conclusion of the matter. This is also echoed under the Republic Constitution. In Article 50 (5) (b) which states:

“The accused has the right to a copy of the record of the proceedings within a reasonable period after they are concluded, in turn for a reasonable fee as prescribed by law.”

10. In this application filed by the intended appellants there is no evidence that copies of judgement and certified court proceedings for appeal purposes were requested for supply to the applicants. The provisions of Article 50 (5) (b) of the Constitution has no conditional

precedent to be fulfilled by an accused person before a copy of the record of the proceedings is issued to him within a reasonable time. The time requisite of 14 days within which an applicant has to lodge an appeal to the High Court is under section 348 and the time required to obtain a copy of the judgement or record of proceedings in my view will be excluded.

11. However the issue of supply of proceedings is not raised as source of delay in lodging of the appeal.

12. The court finds that there are no plausible reasons for a delay of about 6 months. The court thus makes the following orders:-

1) The application is dismissed.

2) The petition filed herein is struck out for being filed out of time without leave of the court.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 25TH DAY OF SEPTEMBER, 2019.

C. KARIUKI

JUDGE