



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CRIMINAL APPLICATION NO. 31 OF 2018

ANTONY KINYUA KIVUTI.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

R U L I N G

1. This is a ruling on an application to appeal out of time undated but filed on 17/08/2018.
2. In the supporting affidavit the applicant states that he was charged and convicted of the offence of malicious damage to property contrary to Section 339(1) of the Penal Code by Embu Senior Resident Magistrate. He was sentenced to serve five (5) years imprisonment on 20/07/2017.
3. He states that he is aware he had 14 days to file the appeal but did not do so. The reason given was that he was waiting for his family to get him a lawyer to file the appeal but this did not happen. He was informed after time for appeal had elapsed that they were not in position to hire a lawyer.
4. During the hearing the appellant introduced a new ground that he used to prepare and send applications through Prison but did not reach this Court. The applicant further states that his appeal has high chances for success and urges this court to allow him to appeal out of time.
5. The respondent opposed that the appeal on ground that it is now over one year since the applicant was convicted. He has failed to explain the delay which is a prolonged one.
6. The applicant has also failed to annex a copy of any of the application he sent to court through the prison.
7. Section 349 of the Criminal Procedure Code gives the accused 14 days within which to appeal against conviction and sentence.
8. Section 349 provides:

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.
9. The law allows for extension of time for filing an appeal only if the court is satisfied by the inability of the appellant or his advocate to obtain a copy of judgement or order appealed against within a reasonable time.
10. The applicant does not rely on any of the reasons in the provision of Section 349. Even if he was to do so, the applicant has to satisfy the court that he brought his application within a reasonable time.
11. The applicant says that his family failed to get him a lawyer and informed him late.
12. I take Judicial notice that most of the criminal appeals in this court are filed by the appellants in person. In a few of them, lawyers have later come on board and filed an amended petition of appeal if need be. I do not find the reason given of waiting for an advocate to represent him as plausible.

13. He also stated that he used to send applications to court through Prison which were lost and never reached court. Not a copy of a single such application was annexed to show that the applicant sent any application for extension of time to this court except the one before the court now.

14. The period of one (1) year from the date of judgment is too long and cannot be said to be a reasonable period under Section 349 of the Code.

15. The failure to explain delay in an application for extension of time is fatal to an application of this nature.

16. I find no merit in this application and dismiss it with no order as to costs.

17. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 31ST DAY OF OCTOBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mate for Respondent

Applicant present