



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CRIMINAL APPLICATION NO. 19 OF 2018

PAUL NYAGA MBAKA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

R U L I N G

1. This is a ruling on an application undated but filed on 08/08/2018 seeking for orders extension of time to file a second appeal in the Court of Appeal.
2. The applicant states that he was convicted of the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act. He was sentenced to 30 years imprisonment in 2015.
3. He filled an appeal against conviction and sentence in this court which was dismissed on 14/6/2016.
4. It is stated that he wished to file a 2nd appeal but failed to do so within the stipulated time. He states that his relatives had promised to hire a lawyer for him but informed him late that they could not afford one.
5. It is further stated that the appeal has high chances of success and that his application ought to be allowed.
6. The respondent opposed this application in that the applicant has taken three (3) years before filing his 2nd appeal and that the delay has not been explained.
7. For the 2nd appeal, the applicants appeal will be restricted to issues of law and he is therefore unable to demonstrate that his appeal has any chances of success.
8. The appeal in the High Court was dismissed over two years ago. The period allowed for appeal is fourteen days.
9. The reason given that the applicant needed a lawyer to file the appeal who could not be procured for him by his family. He says he was informed too late by his family that they could not afford to hire a lawyer for him.
10. Bearing in mind that the period allowed for appeal is only fourteen (14) days, I am of the considered view that a delay of over two (2) years which has not been explained cannot be justified.
11. The applicant was aware of the period available to him to lodge an appeal. He ought to have followed up with his family to ensure he files his appeal within time in person or apply for earliest time possible.
12. I find that the long period of the delay has not been explained and this is fatal to an applicant for extension of time.
13. The application is disallowed accordingly.
14. It is hereby so ordered.

DATED, DELIVERED AND SIGNED AT EMBU THIS 30TH DAY OF OCTOBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Mate for Respondent

Applicant present