

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 6 OF 2018

MICHAEL MUTISYA MWEU.....INTENDED APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The intended appellant filed a notice of motion on 22nd January, 2018 essentially seeking that his appeal be heard out of time. The motion is based on grounds that a long distance family member had promised to hire for him a lawyer but he presumes that they have lacked the required Advocate's legal fees.
2. Cliff O. Machogu who is a prosecution counsel in the Office of the Director of Public Prosecution filed a replying affidavit in opposition to the motion on 19th March, 2018. He contended that section 349 of the Criminal Procedure Code provides for limitation of time of 14 days to lodge an appeal after a trial court delivered its decision on sentencing. That the trial court meted the sentence on 3rd March, 2016 where the appellant was granted 14 days to appeal if aggrieved by the trial court's decision. That the intended appellant did not file any notice of intention to appeal nor did he file any appeal within the stipulated time. That the intended appellant has sought leave to appeal out of time two years after the date of sentencing and has not demonstrated or given sufficient reasons for delay. He stated that the application is frivolous, vexatious and incompetent and improperly before court and is an abuse of court process.
3. I have considered the application and the rival affidavits. The issue for determination is whether or not the intended appellant has given sufficient reasons for the delay in lodging the appeal. It appears that the intended appellant had been acting in person in the matter and having been incarcerated might not have been able to follow up on the requisite documents and thereby lodge the appeal in time. I take judicial notice that prisoners serving sentence hardly have the luxury to visit the court's registries and pursue for proceedings and judgement and they have to rely on the prison officers to run those errands on their behalf. Consequently, there is a high chance that some of the pleadings or documents do not end up at the court registry for processing. Further, some of the prisoners are transferred to other prison facilities and thus it becomes quite difficult for those prisoners to follow up on their cases. This therefore leads to delay in lodging the requisite appeals. The intended appellant herein has stated that the delay was due to the fact that a relative of his promised to hire an advocate to lodge an appeal and represent him but that failed to happen. Having no advocate he must have been affected by the dynamics stated hereinabove.
4. Considering the aforesaid, I find that to deny the Applicant a chance to ventilate his appeal would be against the principles of natural justice. The respondent will not suffer any prejudice if the application is allowed since the intended appellant is still serving the sentence meted out on him by the trial court. In the circumstances, there is good cause for this court to intervene to ensure that the intended appellant is able to ventilate his intended appeal. In the result, it is the finding of this court that the application is merited. The same is allowed with an order that the intended appeal be filed within the next fourteen (14) days from the date hereof.

Orders accordingly.

Dated and delivered at Machakos this 28th day of November, 2018.

D.K. KEMEI

JUDGE