



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**MISCELLAENOUS APPLICATION NO. 13 OF 2015**

**MARY MUTHONI KINYUA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. **MARY MUTHONI KINYUA**, the applicant herein has moved this Notice of Motion dated 11<sup>th</sup> August, 2015 brought under **Section 349** of the **Criminal Procedure Code** for extension of time to file her appeal out of time. The grounds upon which this motion has been brought are as follows:

- i. That the applicant was dissatisfied with the subordinate court's judgment delivered on 24<sup>th</sup> April, 2015.*
- ii. That she applied for certified copy of the proceedings and judgment but there was a delay in obtaining the same.*
- iii. That she has a good appeal with high chances of success.*
- iv. That the respondent will suffer no prejudice if this application is allowed.*

2. The applicant in her supporting affidavit sworn on 11<sup>th</sup> August, 2015 has exhibited the copy of typed proceedings in Wanguru Principal Magistrate's Court Criminal Case No. 467 of 2014 and the copy of the intended petition of appeal as Exhibit 1 and 2 respectively. She has further deposed that she stands to suffer great injustice if she is not allowed to pursue her appeal out of time.

3. The respondent through Mr. Eusebious P. O. Amayo learned counsel for respondent, opposed this application in his replying affidavit sworn on 20<sup>th</sup> January, 2016. The respondent has faulted the applicant for taking too long to bring this application stating that the proceedings in the criminal case were certified on 3<sup>rd</sup> July, 2015 and that no explanation has been put forward why it took another month for the applicant to bring this application. It was contended that the delay is inordinate and shows that the applicant is an indolent litigant who had slept on her rights therefore undeserving of any discretion from this court.

4. I have considered this application and the response made by the state through Mr. Amayo. **Section 349 Criminal Procedure Code** limits time upon which an accused person can file an appeal. The Section provides that an appeal should be filed within 14 days from the date of the order or sentence to be appealed against but there is proviso in the section which gives room for an extension of time. The law provides:

***“provided that the court which the appeal is made may for good cause admit an appeal after the period of 14 days has elapsed and shall so admit 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”***

5. I have considered the reasons advanced by the applicant for not appealing on time and though I agree with Mr. Amayo that a good explanation has not been given why it took the applicant a month to make this application after obtaining the copy of the certified proceedings, I am nonetheless inclined to agree with the applicant that she has shown that her appeal is not frivolous. I have gone through the proceedings annexed and the intended petition of appeal and I am satisfied that a good cause has been shown by the applicant that she deserves to have her day in court to ventilate her grievances. I am also satisfied that the respondent really would not suffer any prejudice in that event. Where a party has shown a spirited intention to appeal against an order or sentence and the grounds are not frivolous, she/he deserves a chance and therefore the court’s discretion should be exercised in her/his favour.

In the premises I find that the application dated 11<sup>th</sup> August, 2015 is merited. It is allowed. The applicant is granted 14 days from the date of this ruling to file her petition of appeal and because the proceedings are typed and certified, preparation of the record of appeal should be expedited and placed before this court for further orders.

***Dated and delivered at Kerugoya this 20<sup>th</sup> day of June, 2016.***

**R. K. LIMO**

**JUDGE**

20.6.2016

Before Hon. Justice R. Limo J.,

State Counsel Sitati

Court Assistant Willy Mwangi

Applicant absent

Interpretation

Sitati for Respondent present

No appearance for applicant.

**COURT:** The ruling is dated, signed and delivered in the open court in the absence of the applicant and in the presence of Sitati for the Respondent.

**R. K. LIMO**

**JUDGE**

20.6.2016