

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL MISC. APPLICATION NO. 10 OF 2016

JOHN GITAU NJOROGE.....APPLICANT

Versus

REPUBLIC.....RESPONDENT

RULING

The applicant was charged with the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act No. 3 of 2016. He denied the charge. The prosecution called witnesses at the trial. At the close of the prosecution and defence case, the trial magistrate convicted and sentenced the applicant to life imprisonment. The appeal at the time was received in the high court registry the 14 days period had lapsed. The applicant filed a further application together with supporting affidavit seeking leave to appeal out of time.

The applicant depones inter alia that upon conviction he sought services of an advocate to file an appeal on his behalf but failed to raise the required legal fees. It was in the course of seeking services of counsel that the fourteen days lapsed. The applicant further contends that in spite he was not able to retain an advocate he is willing and ready to pursue his appeal as per the draft memorandum of appeal.

I have considered the application and affidavit in support upon which the application is premised pursuant to section 349 of the Criminal Procedure Code. I am persuaded that the applicant has demonstrated sufficient grounds which occasioned him not to file the appeal within the prescribed fourteen days. The applicant has a right of appeal to the high court to challenge the conviction and sentence of the trial court in Criminal Case No. 1221 of 2014 holden at Kajiado Chief Magistrate's Court.

I am of the holding that the omission by the applicant of not meeting the deadline of 14 days should not be visited on him. I therefore exercise discretion for the interest of justice in favour of the applicant under Article 159 of the Constitution. The applicant has intimated that he has an arguable appeal.

In the circumstances I grant the prayers sought in the chamber summons dated 13/6/2016 in the following terms:

- (1) The petition and memorandum of appeal on record be deemed as properly filed within time.**
- (2) The deputy registrar to cause the lower court record be typed and served upon the applicant within 30 days from today's date.**
- (3) Further mention on 7/9/2016 before the deputy registrar to confirm compliance and issue further directions on the matter.**

Dated, delivered and signed in open court at Kajiado on 21/7/2016

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R. NYAKUNDI

JUDGE

Representation:

Applicant present

Mr. Akula for the Director of Public Prosecutions

Mr. Mutisya Court Assistant present