



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
CRIMINAL MISC. APPLICATION NO. 16 OF 2016
TOTI OLE KERIKA.....APPLICANT
Versus
REPUBLIC.....RESPONDENT

RULING

The applicant filed chamber summons dated 11th December 2015 brought under the provisions of Section 349 of the Criminal Procedure Code seeking the following order:

That this honourable court be pleased to permit the intended appeal be filed out of time.

The application is premised on the grounds that applicant was charged of attempted murder before the Chief Magistrate Court at Kajiado. The trial court upon hearing the evidence convicted the applicant and sentenced him to 8 years imprisonment.

Being dissatisfied with the sentence he did not file the appeal within the period of 14 days. He has filed a memorandum of appeal attached to the chamber summons raising issues of challenging an order on sentence.

The issue for determination is whether the applicant has satisfied the criteria under the proviso of Section 349. This court is mandated to factor in the provisions of Article 10, 20, 50 and 25 (c) of the Constitution which confers rights upon litigants.

In this matter the court has to exercise discretion on the basis of the proviso of Section 349 of the Criminal Procedure Code. The delay and reason in support should be explained.

It is over a year since the applicant was sentenced to 8 years imprisonment. In the memorandum of appeal he has sought leniency and reduction of sentence. The merit of the conviction is not in issue.

I have carefully considered the application and the reasons its premised on. Further this court has read the annexed intended memorandum of appeal. I am of the considered view that the appeal has not been filed without undue delay. The applicant has not laid a basis to the satisfaction of the court why it took him over a year to lodge the appeal.

The applicant in his affidavit demonstrates that he was aware of the limitation of time to file the appeal within 14 days. There is no evidence by the applicant that appeals are only filed by advocates to the High Court. It is demonstrated that even in the instant application for extension has been brought by applicant himself. The application for enlargement of time has merit.

I therefore allow the same in the following terms:

- 1. The Deputy Registrar do prepare the record of appeal within 30 days from today's date. The same be served upon the applicant.**
- 2. The applicant is challenging an order on sentence under Article 165 of the Constitution. The lower court record be availed.**
- 3. The judgement be typed and served upon the applicant and the prosecution within 30 days from today's date.**
- 4. Hearing on 10/10/2016.**

It is so ordered.

Dated, delivered in open court at Kajiado on 21st day of July, 2016.

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R. NYAKUNDI

JUDGE

Representation:

Applicant – present

Mr. Akula for Director of Public Prosecutions

Mateli Court Assistant