



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL MISC. APPLICATION NO. 4 OF 2016

WILSON MULWA WAMBUA.....APPLICANT

Versus

REPUBLIC.....RESPONDENT

RULING

WILSON MULWA WAMBUA hereinafter referred as the applicant moved this court by way of chamber summons dated 3/3/2016 seeking the following order:

- That this court be pleased to grant leave to file his appeal out of time.

The application is supported by his own affidavit and premised on the following grounds:

- That he was tried and convicted of gang rape contrary to section 10 (1) of the Sexual Offences Act. The trial magistrate sentenced him to 15 years imprisonment.

He was dissatisfied with the decision of the learned trial magistrate as set out in the memorandum of appeal. He avers in the application and affidavit that his family members promised to file an appeal. That the family was unable to raise the fees to retain an advocate and the time set out in the law expired. Mr. Akula for the respondent did not object to the application.

The Law

Appeals to the court are governed by the provisions of Part XI of the Criminal Procedure Code, Section 349 provides for limitation of time of appeal to be fourteen days against the decision of the subordinate court. However there is a proviso where the appeal court can exercise discretion to enlarge time.

DETERMINATION

I have considered the application, affidavit in support and attached draft memorandum of appeal. The inability by the applicant to file appeal within time has been explained.

Taking all factors into account and the provisions of Article 50 of the Constitution, right to a fair trial I make the following orders:

- 1. That the applicant be allowed to file his appeal out of time. This court exercises discretion to enlarge time in favour of the applicant.**
- 2. That the memorandum of appeal filed be deemed as properly filed.**

3. The Deputy Registrar to prepare the record and have it served upon the applicant within 30 days from today's date.

4. Further mention on 7/9/2016 before the Deputy Registrar to monitor compliance with the order

It is so ordered.

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

.....

R. NYAKUNDI

JUDGE

Representation:

Applicant – present

Mr. Akula for Director of Public Prosecutions

Mateli Court Assistant