

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. CRIMINAL APPEAL CASE NO. 6 OF 2016

[Arising from Ruling of P.N. Areri [SRM] in Bungoma CMCR' s criminal case No. 57 of

2008 delivered on 29th June, 2015]

EVANS JULIUS OYINDI

JOHN MUJUMBE AKETCHAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

1. Before court is an application dated 23rd February, 2016 by way of a Notice of Motion pursuant to Sections 349 of the Criminal Procedure Code where the Republic is seeking to appeal against a ruling in CMCR No. 57 of 2008 out of time and costs of the application.

2. The application is based on grounds that the complainant was dissatisfied with the court's ruling to the effect that the prosecution had not established a prima facie case to warrant the accused the respondents in this application be placed on their defence; that failure to file the appeal on time was occasioned by a delay in obtaining proceedings and the process of getting the office of the DPP file the application.

3. Section 349 of the Criminal Procedure Code provides as follows:

“ An appeal shall be entered within 14 days of the date of the order or sentence appealed against provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter an appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the record within a reasonable time of applying to the court therefore.”

4. There is a receipt dated 26th of June, 2015 in support of the averment of the complainant that he applied for proceedings immediately upon the ruling but there was a delay in obtaining the proceedings. I have no reason to doubt this statement and take judicial notice of delays in typing proceedings within the jurisdiction.

5. It would be unfair to lock the complainant out on account of what was beyond him. In the circumstances I will allow the application in terms of prayer 1. The appeal be filed within the next 14 days.

Dated at Bungoma this 1st day of August 2016.

ALI-ARONI

JUDGE.