

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE NO. 62 OF 2014.

REPUBLIC APPLICANT

VERSUS

ERNEST WALUNYWA RESPONDENT

RULING.

1. The Director of Public Prosecutions (DPP) filed a notice of motion on the 23rd of October 2014 seeking to file an appeal out of time. The application is supported by the affidavit of Jesse Kamau Kiragu. The reason given on the face of the application that caused the delay is failure to get typed proceedings on time.

In the supporting affidavit Mr. Kamau states that on seeing the typed proceedings he formed an opinion that the alibi defence was an afterthought and started the process of obtaining necessary information.

2. The application is opposed on the ground that the proceedings were obtained on good time and reasons given cannot sustain the application and indeed an appeal.

3. I have considered the application and the rival arguments adduced. At this stage the concern of the court is whether or not there is good case to admit the appeal out of time. The State Counsel states in his affidavit that there was need to study the court record hence that need for court proceeding and to seek further information from the police in order to make a decision whether to prefer the appeal or not.

4. My reading of section 349 of the Criminal Procedure does not limit necessary documents to only a copy of the judgment, order and record. The information that was being sought for on the state counsel was necessary for purpose of forming an opinion. It took a month to obtain the same. This is a fairly good reason for the delay herein. The delay is not inordinate. In the circumstances the application is allowed.

The appeal be filed within the next seven (7) days of the date hereof.

Dated at Bungoma this 17th day of March 2015.

ALI ARONI

JUDGE.