



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO.65 OF 2014

MARY WANJA NJOROGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged in Naivasha C.M.CR.C.NO.1987/2013 with the offence of **forcible detainer** contrary to **Section 91** as read with **Section 36** of the **Penal Code**.
2. On the 12th June, 2014, she was convicted and fined the sum of Kshs.10,000/= or in default to serve a custodial sentence of eight (8) months.
3. Throughout the period of trial to the stage of conviction and sentencing, the Applicant was not represented by Counsel.
4. Being dissatisfied with the whole judgment, conviction and sentence, the Applicant was desirous of filing an appeal, but upon consulting counsel she was told that the time in which to file the appeal, had lapsed.
5. Counsel proceeded to file an application for leave to appeal out of time by way of Notice of Motion under the provisions of **Section 349** of the **Criminal Procedure Code**.
6. The Notice of Motion is dated the 25th August, 2014 and was filed in court on the same date and is supported by the Affidavit of Mary Wanja Njoroge, the Applicant herein.

ISSUES FOR DETERMINATION

7. After taking into consideration the arguments of Counsel for the Applicant and Prosecuting Counsel for the State, the issues that arise for determination are:
 - i) whether in the circumstances there has been unreasonable delay in the filing of the application for leave to appeal.
 - ii) whether sufficient cause or good cause has been shown for the extension of time.
8. **Section 349** of the **Criminal Procedure Code**, the Section provides:

“An appeal shall be entered within fourteen 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 the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.”

9. After, carefully reading the section, it follows that the period prescribed within which to file an appeal is fourteen (14) days. The period is rigid unless good cause is shown that the court can act on .
10. This is set out in the proviso to the Section which reads:

“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 the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.”

11. The proviso is specific in that the court must be satisfied that the delay is occasioned by the inability of either the Appellant or advocate in obtaining copies of the judgment, copies of the record within reasonable time.
12. The date of judgment was 12th June, 2014 and on the 25th August, 2014, the application for leave to appeal out of time was filed. This period translates to 74 days which is approximately 2½ months.
13. What is of interest, is that a copy of the judgment is annexed to the Applicants affidavit yet the same affidavit is silent on the following facts:
- i) the date the Applicant approached Counsel with this brief.
 - ii) A letter to show whether Counsel wrote to the lower court requesting for copies of the judgment or proceedings.
14. The above notwithstanding, Counsel has shown that he exercised due diligence in filing the application for leave to appeal out of time and the court finds that a period of 2½ months cannot be deemed as inordinate delay.
15. In obtaining the copies of judgment within the window period of 2½ months, this court finds that the Applicant has also shown diligence and good cause for extension of time.
16. The court is of the view that the Respondent has not shown the prejudice that it may suffer if the application were to be granted.

DETERMINATION

17. For the reasons stated above the application is found to be meritorious and it is hereby allowed.
18. The Applicant is hereby granted an extension of 30 days from the date hereof in which to file her Petition of Appeal.

It is so ordered.

Dated. Signed and Delivered at Nakuru this 16th day of December, 2014.

A. MSHILA

JUDGE

In the presence of:

Karanja Mbugua for Applicant

N/A for DPP