



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Criminal Application 56 of 2012

REPUBLIC.....APPLICANT

VERSUS

ELISHA KIPKEMBOI MURKOMEN.....RESPONDENT

RULING:

The Appellant herein is the State and by a Notice of Motion dated the 3rd day of May, 2012 seeks leave to appeal out of time against the judgment of Hon. C.G. Mbogo in Eldoret CMCC 147 of 2008 delivered on the 13th September, 2010.

The Prosecuting Counsel for the State, Mr. Kabaka relied on his supporting and supplementary affidavit and averred that the Judgment was delivered on the 13th September, 2010.

thereafter their office applied for certified copies of the proceedings on the 21st October, 2009 and a response was received on the 19th November, 2010.

after receiving the typed and certified proceedings the Applicant avers that they did not proceed to seek leave to file the appeal out of time as the proceedings were misplaced.

When seeking leave to file an appeal out of time it is incumbent upon the Applicant to give a reasonable explanation so as to satisfy the court that it had a good and sufficient reason for not filing the appeal in time.

The Judgment sought to be appealed against was delivered on the 13th September 2010. The Applicant purports to have applied for the typed and certified proceedings on the 27th September, 2010.

The typed and certified proceedings were forwarded to the Applicant vide a letter dated 18th November, 2010 and received at the Applicants offices on the 19th November, 2010.

By the time the proceedings were received the appeal was already out of time, time ran out on the 28th September, 2010.

The application herein was filed in May, 2012 and was canvassed on the 1st November, 2012 which translates to a delay of over twenty four (24) months.

The case law on what period constitutes inordinate delay is legion. A delay of four(4) months has been held as inordinate.

This court finds that the Applicant is guilty of “LACHES” and the Applicant has not satisfied this

court that it had good and sufficient cause for not having filed the appeal in time.

The court finds that the application has no merit and the same is hereby dismissed.

DATED and DELIVERED at Eldoret this 29th day of January 2013

**A.MSHILA
JUDGE**

Coram: Before Hon. A Mshila J
CC; Andrew
Kabaka for State -Exparte.

**A.MSHILA
JUDGE**