



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Criminal Application 107 of 2012

REPUBLIC.....APPLICANT

VERSUS

FRANCIS JERE & 2 OTHERS.....RESPONDENT

RULING:

The application is brought by way of Notice of Motion under the provisions of Section 349 of the Criminal Procedure Code.

The Applicant being aggrieved by the acquittal seeks leave to file an appeal against the same but is out of time.

The Notice of Motion is dated the 9th day of August, 2012 and is deemed to have been filed in court on the 15th July, 2012 and the annexed supporting affidavit and Petition of Appeal are both dated the 9th August, 2012.

Counsel for the State submitted that he was relying on the grounds on the face of the Notice of Motion and on the Supporting Affidavit annexed thereto.

Counsel further submitted that the delay was occasioned in obtaining copies of the certified proceedings from the court and that when the same were received in June, 2011, the said proceedings were misplaced within their offices.

Counsel referred the court to the annexed Petition of Appeal and submitted that the appeal had overwhelming chances of succeeding particularly on the issue of identification.

Counsel urged the court to allow the application as the Applicant would be prejudiced were the application to be disallowed.

The provisions of Section 349 of the Criminal Procedure Code provide that;

“.....An appeal shall be entered within fourteen days of the date of the order or sentence appealed against”.

The proviso to the Section allows the court to admit an appeal after the fourteen (14) day period has lapsed provided the court is satisfied that the delay was caused by the inability of the Appellant in obtaining the proceedings or judgment within reasonable time of application therefor.

The use of the word “may” in the proviso shows that this court has discretion to extend the time for

filing of an appeal provided the Applicant satisfies the court that the proceedings were not obtained in reasonable time of having applied for the same.

I have perused the court record and have failed to sight any letter from the Applicant to the court requesting for the court proceedings and or the judgment.

Likewise, I have sighted no letter from the court made in June, 2011 advising or forwarding the proceedings to the Applicant.

This court finds no merit in the application as the Applicant has not satisfied this court that the delay was occasioned by failure to obtain the court proceedings or judgment within reasonable time of having applied to court therefor.

The application is hereby dismissed.

It is so ordered.

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

**A.MSHILA
JUDGE**

Coram: Before Hon. A Mshila J
CC: Andrew
Counsel for the Applicant: Kabaka Ex-parte

**A.MSHILA
JUDGE**