

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 60 OF 2013

ALI HASSAN ABDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Ali Hassan Abdi, the applicant, seeks bail pending appeal and leave to file an appeal out of time. He brings this application under Sections 349 and 356 of the Criminal Procedure Code and Article 49 of the Constitution as well as costs. He bases this application on the grounds that his advocate filed for revision in Criminal Revision No. 4 of 2011 instead of an appeal and that this delayed the filing of the appeal. He deposes that this is a mistake committed by his advocate and should not be visited on him; that his appeal has high chances of success and that no prejudice will be occasioned to the Respondent. The applicant has attached a copy of the Ruling on Revision where the Judge ruled that the applicant ought to have filed an appeal instead of the revision. He has also attached the Petition of the intended appeal.

The application was opposed by the State through learned State Counsel. Counsel submitted that Section 349 Criminal Procedure Code is specific to the delay caused by failure to obtain proceedings in time; that the applicant has not demonstrated that he applied for proceedings and that these were delayed; that failure to file the appeal in time was occasioned by the applicant himself; that the orders for bail pending appeal have been spent because the application has been brought two years after sentence of three months. Counsel submitted that the applicant has not advanced sufficient grounds to warrant the granting of the orders he is seeking. He asked the court to dismiss the application.

In reply counsel for the applicant submitted that the applicant has been on bail throughout and has not served the sentence; that the appeal raises legal issues that needs to be addressed on appeal and that the discretion of the court is unfettered.

I have considered the application and rival submissions. In the interest of justice I will and do hereby allow the application. The intended appeal shall be filed and served on the State within 14 days after this ruling has been delivered to pave way for a hearing date. I make orders accordingly.

S.N MUTUKU

JUDGE

Signed, dated and delivered this 17th December 2013.