



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPLICATION 5 OF 2012

REPUBLIC.....APPLICANT

VERSUS

KAINDI LETIKRISH & 11 OTHERS.....RESPONDENTS

RULING

Before me is the Notice of Motion dated 24/1/2012 in which the Republic seeks to be granted leave to lodge an appeal out of time against the ruling of Hon. B.S. Khapoya, DM II, in Maralal SPMCRC 263/2011, dated 21/7/2011. The 2nd prayer is that the court do set a period within which the appeal should be lodged. The application is premised on grounds found on the face of the application and the affidavit sworn by Nerolyne Idagwa Miraho, a state counsel attached to the office of Director of Public Prosecutions, Nakuru and who has conduct of this matter.

The twelve (12) respondents were charged in the SRMCRC 263/2011, with five counts of assault contrary to **Section 251** of the **Penal Code**. After hearing the prosecution case, the court acquitted the 12 respondents of all the charges under **Section 210** of the **Criminal Procedure Code**. The applicants are dissatisfied with the ruling and wish to appeal against the said decision. The applicant contends that they applied for proceedings but the same were supplied after the statutory period allowed for appeal had lapsed; that the proceedings were supplied to them on 11/1/2012. It is the applicant's contention that the intended appeal has overwhelming chances of success and that the delay in filing the appeal was not deliberate, it is also the applicant's contention that the respondents will not suffer any prejudice.

The application was opposed, Geoffrey Letikirish, the 8th respondent deponed that he has authority of the other respondents to swear the replying affidavit. He deponed that proceedings in Maralal CRC 263/2011 commenced on 11/4/2011 and were concluded on 21/7/2011. The applicant was represented and there is no evidence that the applicant applied for proceedings; that no explanation has been given for the period between July 2011 and 24/1/2012 when this application was filed; that a period of 6 months is inordinate delay and in any case, the intended appeal has no chance of success.

Section 349 of the **Criminal Procedure Code** allows a party who wishes to appeal against a conviction 14 days to do so. However if for good cause one cannot be able to file an appeal for want of the proceedings or judgment, within the stipulated period, the court may extend the said period if an application is made within a reasonable time.

I have perused the file and the application and I find no evidence that the applicant ever applied for the proceedings of the lower court after the ruling was read. However, there is indeed an appeal which was filed on 24/1/2012. The proceedings before the trial court commenced on 11/4/2011 and were concluded on 21/7/2011 when the ruling was read. That was a period of about 3 months. The hearing was conducted speedily. The prosecution called a total of 11 witnesses. The proceedings of the lower court are quite lengthy and must have taken quite a while to type and proofread.

I have perused the record, the evidence adduced before the court, the ruling of the trial court and the grounds of appeal and I am of the view that the respondent has an arguable appeal. Having found that the respondent's trial was speedily conducted and the proceedings then took about 5 months to type, proofread and for this application to be made, I am satisfied that there has been no inordinate delay. There is no evidence that the respondents will suffer any prejudice nor has any been alluded to. It is in the interest of justice that the applicant be allowed to exercise its right of appeal. For the above reasons, I grant the applicant leave to lodge their appeal out of the stipulated time. The appeal be lodged and served within 10 days hereof, in default, the leave granted will lapse automatically. It is so ordered.

DATED and DELIVERED this 25th day of May, 2012.

R.P.V. WENDOH
JUDGE
PRESENT:

Mr. Omari for the applicant

Mr. Ombati holding brief for Mr. Mugambi for the respondents

Kennedy – Court Clerk