



REPUBLIC OF KENYA

High Court at Embu

Miscellaneous Criminal Application 19 of 2012

NDII MWAKIRIE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

The Applicant has come before this Court under Section 349 of the Criminal Procedure Code praying for leave to file appeal out of time. The Application is dated 13/7/2012 and was filed on 19/7/2012. The grounds are on the face of the application. The main ground is that the applicant received a certified copy of proceedings on 24/4/2012. In his supporting affidavit he states that Judgment was delivered on 28/12/2011 and received the certified proceedings on 24/4/2012. And that he is being harassed by the probation officer to vacate the land.

With leave of the Court, Mr. Omayo for the State filed a replying affidavit opposing the application saying there is no good reason given for the delay.

There is no dispute that the Judgment the applicant wishes to appeal from was delivered on 28/12/2011. the Applicant has not shown this Court when he applied for proceedings. He did not also obtain any certificate of delay from Senior Principal Magistrate's Court Siakago to show that it is the Court that delayed in supplying the proceedings.

His annexure CMK shows that the proceedings were certified on 22/3/2012. If indeed he obtained them on 24/4/2012, what was the reason for the delay? Even if he obtained them on 24/4/2012, what made him not apply for leave until 19/7/2012? This is an unexplained delay of 3-4 months. It was his duty to explain the delay. The period for filing a criminal appeal is 14 days. In the absence of any explanation for the delay I find no merit in the application which I dismiss.

DELIVERED, DATED AND SIGNED AT EMBU THIS 30TH DAY OF OCTOBER 2012.

H.I. ONG'UDI

JUDGE

**In the presence of:-
Mr. Omayo for State
Applicant
Njue CC**