

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Misc. Crim. App. 27 of 2006

JULIA MUTHONI MBURU APPLICANT

versus

REPUBLIC RESPONDENT

RULING

The present application dated 22nd August 2006 seeks that the applicant be allowed to file her appeal out of time. In that application the appellant through her advocate deponed that she had been charged in the lower court with the offence of *creating a disturbance in a manner likely to cause a breach of the peace contrary to Section 95(1) of the Penal Code*. On 10th February 2005 she was convicted and sentenced to 6 months imprisonment. On that same day she instructed her counsel to appeal against conviction and sentence. Proceedings were applied for on 16th February 2005. According to her those proceedings were not received by her counsel until 5th August 2005. That on 12th December 2004 her father had died and that together with the delayed proceedings contributed to failure to file the appeal in time. The application was opposed by the learned Principal State Counsel. In his view the application is based on sentimental reasons. He also faulted the application for failing to annex certificate of delay or the lower court proceedings. Indeed I find I am in agreement with the opposition raised. The applicant in seeking the exercise of the court's discretion in her favour should have placed material before court to enable the court to so exercise that discretion. Apart from the intended petition of appeal the applicant did not put anything else that can assist this court. Even the death certificate relied upon shows that death occurred on 12th December 2004. The lower court judgment was delivered in February 2005. It is therefore difficult to understand how that death contributed to the delay of filing this appeal. Accordingly the order of this court is that the chamber summons dated 22nd August 2006 has no merit and is dismissed.

Dated and delivered this 10th day of February 2009

MARY KASANGO

JUDGE