



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Misc Crim Appli 48 & 49 of 2004 & 1289 of 2003

REPUBLICAPPLICANT

versus

SAMSON KARAFKA KEVOLWE.....RESPONDENT

AND

MISC CRIMINAL APPLICATION NO. 49 OF 2004

REPUBLIC.....APPLICANT

Versus

JOHN KAVITA KARAFKA.....RESPONDENT

BOTH

FROM VIHIGA CRIMINAL CASE NO. 1289 OF 2003

REPUBLICAPPLICANT

versus

SAMSON KALAFWA & JOHN KALAFWARESPONDENT

RULING

The State filed two identical applications dated 22.10.2004 in each of which it sought leave to file appeal out of time from the order of acquittal of the two respondents made on 18.8.04 in Vihiga Criminal case No. 1289 of 2003 by Mrs. R.A. Oganyo.

The affidavit of Mr. Daniel Karuri in support of the applications shows that the acquittal of the Respondents was on 18.8.2004 and that application for copies of the judgment was made on 1.9.2004. The lower court supplied the judgment and proceedings on 21.10.2004 by which time, time for lodging appeal had run out. The applications for leave to appeal out of time were filed on 28.10.2004. Both Respondents filed identical affidavits to the application. In their affidavits, the Respondents opposed the

applications and submitted that the applications had been brought after unexplained undue delay.

Mr. Karuri, State counsel, who appeared for the Applicant at the hearing urged the court to grant the application as the delay was not inordinate. On his part, Mr. Nyanga, Advocate, who appeared for both Respondents submitted that the applications were an afterthought designed to punish the Respondents.

I have perused the applications and the supporting affidavits by Daniel I. Karuri, State counsel, as well as the affidavits of the Respondents. I have given due consideration to the submissions of Mr. Karuri, State counsel, and Mr. Nyanga, advocate for the Respondents. The application for judgment and proceedings was made on 1.9.2004 just before the period for lodging appeal had run out. The lower court supplied the same on 21.10.2004. Within seven days of receipt of the judgment and proceedings the Applicant filed (on 28.10.2004) the application for leave. I have not seen any evidence to support the allegation by Mr. Nyanga that the application for leave is an afterthought or that it is intended to punish the Respondents.

In my view, there was no inordinate delay by the Applicant either in applying for the judgment or in applying for leave. In the circumstances, I allow the applications and order that the time for lodging appeal is extended to the date on which the Applicant lodged the Petitions of Appeal (on 28.10.2004) which are hereby deemed to have been filed out of time with the leave of court. It is so ordered.

Dated at Kakamega this 16th day of March 2005

G.B.M. KARIUKI

J U D G E