

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA
Misc Criminal Appli 25 of 2005

IBRAHIM MUSUNGU MASAI

MUSA OMAR.....APPLICANTS

VERSUS

REPUBLIC RESPONDENT

RULING

On 19.4.2005 the Applicants, IBRAHIM MUSUNGU MASAI and MUSA OMAR, made to this court the application dated 12.3.2005 seeking leave to appeal against their conviction and sentence in Mumias SRM Criminal case No.149 of 2002 in which judgement was delivered on 27-08-04. The application was made more than seven months after the judgement and as at the date it was made, the appeal was out of time by more than 6 months.

Section 349 of the Criminal Procedure Code, Cap 75, enjoins every appellant to enter appeal within 14 days. Under the proviso to the said section, the court is vested with discretionary power to admit an appeal after the expiry of 14 days

(a) if good cause is shown; or

(b) if the applicant satisfies the court that the failure to enter appeal within 14 days was caused by the inability of the applicant to obtain a copy of the judgement or order appealed against within a reasonable time of applying to court for the same.

In the present application, the applicants allege that they wrote to the court on 3-9- 2004 for a copy of the proceedings and have exhibited a letter marked "IMM-1" signed by the first Applicant and annexed to the latter's affidavit in support of the application. It does not appear to bear any court Registry stamp. The Applicants averred that the proceedings were availed to them in February, 2005. They did not state the date in February 2005 when they were availed or why it took them the whole of March and half of April 2005 before they made the application for leave. They did not furnish any evidence to show the date on which they paid for them on collection. They did not disclose all the material facts. If the applicants were prevented from appealing due to lack of judgement and proceedings, which they alleged they applied for in time but received on an unspecified date in February 2005, they have failed to satisfy the court that there was good cause in their failure to enter appeal within 14 days of receipt of the judgement and proceedings.

A period of close to two months after receipt of judgement and proceedings cannot be described as reasonable. It is my finding that the Applicants have failed to satisfy the court that they were prevented from entering an appeal due to any sufficient cause.

The application has no merit whatsoever and it is hereby dismissed.

Dated at Kakamega this 27th day of July, 2005.

G. B. M. KARIUKI

J U D G E