

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPLICATION NO.53 OF 2004

REPUBLIC.....APPELLANT

=V E R S U S=

MOHAMED AHMED.....RESPONDENT

RULING/JUDGMENT

The State has applied for leave to file an appeal out of time. Time for filing appeals from subordinate court to High Court is limited to 14 days under Section 349 Criminal Procedure Code. However, there is a proviso allowing extension of the time where for good cause is shown. The court is mandated to allow the extension of time if it is satisfied that the failure to enter the appeal within the time has been caused by the inability of the Applicant or his Advocate to obtain a copy of judgment or order appealed from and a copy of the record within a reasonable time of applying for the same.

In this case judgment was made on 18/12/2003. It is said the copies were handed over to State Law Office on 30/3/2004. There is no evidence of when the application by the State was made for the copies. The court cannot therefore determine if the application was made within a reasonable time. Also no copies of judgment has been attached to this application to indicate the chances of success in the proposed appeal.

The copy of Petition of Appeal contains only one ground thus: *“The trial Magistrate erred in law by conducting and allowing the appearance of an unauthorized person in law thus nullifying the trial.”*

The basis of this ground is not explained. Was it raised at the trial? This court has no way of finding out.

Defence counsel submits that according to his record the trial was conducted in such a manner that its result is a nullity. There is no guarantee that the Applicant will be granted a re-trial in the appeal. He also points out that the trial was fully conducted and acquittal was under Section 215 Criminal Procedure Code was upon a full trial. I find it would be prejudicial to grant leave to appeal when the reason for delay is not explained as required under Section 349 Criminal Procedure Code. I also find that the Applicant has not indicated good reason that the appeal stands a chance of success. The matters of criminal nature are serious, the liberty of a human being is likely to be affected. It is only for very good reasons should a court allow a person's liberty be put in jeopardy. I find no reason here to grant leave so that the Respondent can once again be put through a trial that does not have good chances of success.

We have also to consider the guarantee of Human Rights as entrenched in our Constitution.

For the above reasons I do not find any good cause as shown to grant leave sought.

The application is dismissed.

Dated at Mombasa this 17th day of May, 2004.

JOYCE KHAMINWA

J U D G E

Ms Mwaniki:-

I apply for typed proceedings and Ruling both certified.

Court:-

Let the same be provided.

JOYCE KHAMINWA, J.