

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

**HIGH COURT MISC CRIMINAL APPLICATION NO. 129 OF
2002**

(Org. CM's Nyr CR.C NO. 2025/01)

NELSON MAINA KOMUAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The applicant NELSON MAINA KOMU was convicted by the Resident magistrate Nyeri on 1st October 2001 of the offence of creating disturbance in a manner likely to cause a breach of the peace contrary to Section 95 (1) of the Penal Code. He was fined Kshs.6,000/- and in default to serve four (4) months imprisonment. On 2nd October 2001 the applicant applied for certified copies of proceedings and judgment. He paid Kshs.300/- as deposit of the copying charges. It is per the certificate of delay issued by the lower court. The proceedings were supplied to the applicant on 16th October 2001. The judgment was supplied to him on 18th December 2001.

By an application dated 28th May 2002 and filed in court on the same day, the applicant seeks the leave of this court to file an appeal against the said conviction and sentence. In his supporting affidavit the applicant depones that the reason for not filing the appeal within the statutory period was because he was ailing. He attached photocopies of the treatment cards to the application. I have perused the two cards which are headed General Outpatient record. The last entry on card Number 98086 was made on 12th September 2001. The last entry on card Number 146731 is dated 10th March 2002. The reasonable interest one can draw is that between the two dates the applicant was well as there is no indication to the contrary. The two cards confirm that the applicant was not admitted in hospital. The reasons for the delay in lodging the application within a reasonable time is not sufficiently explained. I am not convinced by the excuse given by the applicant.

I see no merit in the application. The application for leave is refused. The same is dismissed.

Dated this 16th day of September 2002.

J.K. MITEY

JUDGE