

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC.CRIMINAL APPLICATION NO. E344 OF 2020

QUI XIAOTING.....APPLICANT

VERSES

REPUBLIC.....RESPONDENT

RULING

1. Qui Xiaoting, the Applicant, approached this court by way of Notice of Motion seeking leave to appeal out of time against the sentence and conviction in Criminal Case No.89 of 2018, in the Senior Principal Magistrate's Court at JKIA.

2. The application is based on grounds that the delay was caused by a delay in obtaining certified copies of typed proceedings and the judgment of the trial court, circumstances that were beyond her control.

3. The State through Ms. Chege, learned State Counsel did not oppose the Application.

4. The Applicant was charged with the offence of trafficking in psychotropic substances contrary to section 4(a) of the Narcotic Drugs and Psychotropic substances (control) Act

No. 4 of 1994. She was convicted and sentenced to serve life imprisonment and in addition, she was required to pay a fine of Ksh. Forty million and in default to serve one (1) year imprisonment.

5. Section 349 of the Criminal Procedure Code provides as follows:

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against: Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor

5. This court is seized of the discretion to admit an appeal outside the time limited to appeal. The qualification is the reason given, it must be for a good cause.

6. In the instant case the Applicant was convicted and sentenced on the 15th day of October, 2019. She urges that she applied for certified copies of proceedings that were obtained in 2021. The Respondent did not dispute the allegation of the delay being something beyond the Applicant's control. This is therefore, a good cause.

7. In the premises, leave is granted to the Applicant to appeal out of time within 14 days of today.

8. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 10TH DAY OF MARCH, THIS 2021.

L .N .MUTENDE

JUDGE