



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**MISC. CRIMINAL APPLICATION NO 5 OF 2020**

**(ALSO; NAROK MISC. APPL. NO. 32 OF 2018;**

**& CR. APPEAL NO 31 OF 2019)**

**ALEX SALAIYO ABRAHAM.....APPLICANT**

**-versus-**

**REPUBLIC.....RESPONDENT**

**RULING**

**Leave to appeal out of time**

[1] The applicant has filed three causes to wit: (1) NAROK MISC. CRI. APP. NO. 32 OF 2018; (2) NAROK CR. APPEAL NO. 31 OF 2019; and (3) NAROK MISC. CR. APP. NO. 5 OF 2020. Notably, the pleading he file in (2) above is entitled; ***“Memorandum Grounds of Appeal out of Time”***. Essentially, in the three cases, he is seeking for leave to file appeal out of time. The question is this: Is there a good cause to admit the appeal or allow him to file appeal out of time?

[2] The applicant in his pleadings and affidavits filed in the three cases states that he was convicted for defilement contrary to section 8(1)(2) of the Sexual Offences Act and sentenced to serve a life imprisonment by Hon. T.A. SITATI, RM on 26<sup>th</sup> July 2013. That he depended on his family to hire a lawyer to file an appeal against the conviction and sentence. However, he was informed that the lawyer charged such exorbitant fee that his family could not raise. He stated therefore that poverty prevented him from filing appeal. He emphasized his request on 23<sup>rd</sup> November, 2020 when he addressed and beseeched the court to grant him leave to file appeal out of time.

[3] Ms. Torosi, the prosecution counsel opposed the application. She submitted that the applicant went to slumber and is guilty of inordinate delay. She stressed that 7 years have lapsed since his conviction and his application can only be an abuse of court process. She expressed the need to bring litigation to a close. For those reasons, she urged the court to dismiss the application for leave to appeal out of time.

**ANALYSIS AND DETERMINATION**

**The threshold**

[4] According to section 349 of the Criminal Procedure Code: -

***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 appellants 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] The yardstick is; *for good cause*. In ascertaining good cause, the court should be satisfied that failure to enter appeal in time was caused by inability to obtain judgment or order or record thereof within the prescribed time, that is, fourteen days. The appellant did not claim he ever requested for judgment or record of the proceedings. Notably, criminal appeals may be filed and proceedings provided at no cost. I do note he filed three matters in court at no cost in 2018, 2019 and 2020. Therefore, his claim that poverty prevented him from filing appeal does not hold sway.

[5] In addition, 7 years have lapsed since conviction. The explanation provided for the delay is not satisfactory. Thus, the delay is inordinate, and, therefore, inexcusable.

[6] It is clear the direction the court is taking. I find no good cause to admit appeal filed out of time or grant leave to the applicant to file appeal out of time. I dismiss all his applications as well as the appeal he filed out of time. This ruling be filed in each of the three files herein. It is so ordered.

**Dated, signed and delivered at Narok through Teams Application, this 7<sup>th</sup> day of December 2020**

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**F. GIKONYO**

**JUDGE**