



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR MISC. APPL. NO. 176 OF 2017

BENSON MUNYAO MUSANGO.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

INTRODUCTION

1. The Applicant was charged with offence of Defilement of a child contrary to section 8(1) as read with sub-section 4 of the Sexual Offences Act No. 3 of 2006.
2. Particulars are that on diverse dates between 17th and 22nd days of July 2013 in Mbooni East District within Makueni County, the Applicant intentionally and unlawfully caused his penis to penetrate the vagina of TNN a child aged 17 years.
3. He pleaded not guilty and the matter went into full hearing. He was found guilty and convicted and sentenced to serve 15 years imprisonment.
4. On 03/07/2014 and 08/08/2016 after a span of 2 years plus, he lodged an application to file appeal out of time.
5. His grounds for delay in filing the appeal, he says that he lacked professional advice on how to draw the appeal.
6. He also states that he was unable to hire the service of an advocate.
7. The provisions of **Section 349 CPC Cap 75** stipulate that;

“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 thereof.”

8. In our instant matter there is none of the cited legal grounds which have been established.
9. In any event a delay of 2 years is inordinate and inexcusable.
10. The court make the following orders:-

- 1) The Application is dismissed for want of the merit.**
- 2) The Application dismissed with costs to the Defendant.**

SIGNED, DATED AND DELIVERED THIS 18TH DAY OF FEBRUARY, 2019 IN OPEN COURT.

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HON. C. KARIUKI

JUDGE