

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC CRIMINAL APPLICATION NO. 133 OF 2018

JAMLECK KIRIMI KINOTI.....APPLICANT

-VS-

REPUBLIC.....RESPONDENT

R U L I N G

1. Before me is a Motion on Notice brought pursuant to *section 349 of the Criminal Procedure Code, Cap 75 of the Laws of Kenya* in which the applicant seeks to be allowed to appeal out of time. The application is based on the grounds on the face of the Motion and the affidavit in support thereof sworn by the applicant.

2. The grounds are that; the applicant was charged with the offence of robbery with violence contrary to *section 296 (2) of the Penal Code*. That after conviction and sentence, he did not lodge the appeal within the 14 days stipulated by law. That the failure to file the appeal within time was caused by his incarceration. That since he was in custody, he was unable to contact his relatives who had promised to instruct an advocate to lodge an appeal on his behalf but had failed to do so.

3. When the matter came up for hearing on 10th December, 2018, Mr. Kiarie for the State did not oppose the application. I have carefully considered the affidavit in support. *Section 349 of the Criminal Procedure Code CAP 75 of the Laws of Kenya* grants this court the jurisdiction to extend time for filing of appeals out of time. All that is required of an applicant is to show good cause.

4. In the present case, the applicant contended that he did not file the appeal within time because his relatives had promised to contract an advocate to file an appeal on his behalf but they did not. Because he was in custody, he lost contact with them and could not communicate with them. Good cause is defined by **Black's Law Dictionary 10th Edition** as a legally sufficient reason. Good cause is often the burden placed on a litigant by court, rule or order to show why a request should be granted or an action excused.

5. The applicant has a right under *Article 49 of the Constitution* to have his case considered by a higher court. In my view, it is probable that after one is sentenced and placed in custody, ones relatives may forget about him and move on with their lives. Although the applicant took over a year to come to court, I am inclined to excuse him for that.

6. Accordingly, I find the reasons advanced by the applicant to satisfactory and I allow the application. The petition of appeal annexed to the application is hereby deemed to have been filed with leave.

DATED and **DELIVERED** at Meru this 14th day of February, 2019.

A. MABEYA

JUDGE