

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC CRIMINAL APPLICATION NO. 132 OF 2018

TITUS MUGAMBI.....APPLICANT

-VS-

REPUBLIC.....RESPONDENT

R U L I N G

1. Before me is a Motion on Notice brought under *section 349 of the Criminal Procedure Code, Cap 75 of the Laws of Kenya* by 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 rape contrary to *section 3 (1) (a) (c) of the Sexual Offences Act* and that after conviction and sentence, he did not lodge the appeal within the 14 days stipulated by law. That because of incarceration, he lost contact with his relatives who had promised to instruct an advocate to lodge an appeal on his behalf. That for that reason, he failed to lodge the appeal on time.
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* provides:-

“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 therefore (Emphasis added)

4. In the present case, the applicant told the court that he was unable to 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. That because he was in custody, he lost contact with them and could not communicate with them.
5. All that is required of an applicant under *section 349 of the Criminal Procedure Code* is to show good cause. Good cause is defined in **Black’s Law Dictionary 10th Edition** as a legally sufficient reason. To my mind, it is not improbable that relatives can abandon their own who has been jailed. Although the time taken by the applicant to make the present application is long, (since October, 2017), to seek the present remedy, for the reasons advanced I will excuse the delay.
6. Accordingly, I find the reasons advanced by the applicant to be satisfactory. I allow the application and direct that petition of appeal annexed to the application is hereby deemed to have been filed with leave. Let the same be served upon the Director of Public Prosecution accordingly.

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

A. MABEYA

JUDGE