

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL MISC. APPLICATION NO. 65 OF 2018

SYENGO MWENDWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **Syengo Mwendwa**, the Applicant seeks leave to appeal out of time against the conviction and sentence. The Application is premised on grounds that: his relatives promised to hire a lawyer to appeal on his behalf but they lacked fees to do so; the trial Court delayed in providing him with a copy of the Judgment hence the delay; and he was transferred prior to lodging the Appeal.
2. He deponed an affidavit in support of the Appeal where he reiterates what is stated in the body of the Application.
3. The Application is opposed by the State on grounds that the Appellant had filed another Appeal.
4. **Section 349** of the **Criminal Procedure Code** provides thus:

“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. The Applicant herein was convicted and sentenced by the trial Court on the **13th July, 2016**. He filed **Misc. Criminal Application No. 47 of 2016** seeking to move this Court to exercise its judicial discretion pursuant to **Article 159(2)(c)** of the **Constitution** by allowing him to reconcile with his daughter, the Complainant in the case. On the **31st July, 2018** the Applicant withdrew the Application. As that Application was pending in Court he filed an Appeal against the conviction and sentence on the **21st February, 2018** pursuant to leave of Court granted on the **21st February, 2018** an Appeal that he withdrew on the **11th April, 2018**.
6. The Applicant herein exercised his right to appeal after he obtained leave of Court. He cannot be heard to allege that the delay was caused by some inability to obtain a copy of the record. In fact the conduct of the Applicant amounts to an abuse of due process. Therefore, I have absolutely no reason to grant the Applicant the order sought. In the result the Application is dismissed.
7. It is so ordered.

Dated, Signed and Delivered at Kitui this 5th day of March, 2019.

L. N. MUTENDE

JUDGE