



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL MISC. NO. 32 OF 2018**

**MICHAEL MURIITHI SARAH.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

**A. Introduction**

1. The applicant was charged and convicted of the offence of being in possession of narcotics contrary to section 3 (1) as read with section 3 (2) of the Narcotic Drugs and Psychotropic Substances (Control) Act 1994 and was sentenced to serve three (3) years imprisonment on the 29<sup>th</sup> December 2017.
2. On the 31<sup>st</sup> August 2018, the applicant filed a petition of appeal of the aforementioned sentence rendered by the trial court. The applicant also filed an application by way of chamber summons seeking this court's orders to file his appeal out of time.
3. It is the applicant's case that he did not appeal because despite promises by his family to get a lawyer on his behalf, this was not successful. He further states that his appeal has a high chance of success. The respondent oppose the application on the grounds that the applicant had failed to explain the long delay in filing his appeal as well as the fact that the respondent has since served a substantial term of his sentence.
4. This ruling pertains to the applicant's chamber summons application dated 31<sup>st</sup> August 2018.

**B. Applicant's Submission**

5. The applicant submits that he prepared his appeal on time and gave it to the prison office who did not file it in court. He further submitted that he filed his aforementioned appeal after realizing that the prison office had not filed his appeal.

**C. Respondent's Submission**

6. The prosecution submitted that they opposed the respondent's application and further that they relied on their replying affidavit sworn on the 2<sup>nd</sup> May 2019 in which they stated that the applicant had failed to demonstrate any attempts to apply for certified copies of the judgement or to file a certificate of delay.
7. It was further submitted that the applicant had since served a substantial term of his sentence and thus his appeal would have been merely academic.
8. I the issue for determination is whether the applicant has satisfied this court that he deserves enlargement in filling his appeal.
9. The law on enlargement of time is clearly outlined under **Section 349 proviso of the Criminal Procedure Code** therein which states as follows:

**“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 applicant or his advocate to obtain a copy of the judgement or order appealed against, and a copy of the record, within a reasonable time of the applying to the court therefore.”**

10. The time requisite of 14 days within which an applicant has to lodge an appeal to the High Court is under Section 348 of the Criminal Procedure Code. The applicant did not say that he requested for the copies of judgement and certified court proceedings for appeal purposes. The applicant does not require the proceedings and the judgement to file the appeal in the first instance. He may lodge his appeal on time and amend his petition once he obtains the proceedings.

11. The applicant said that he was waiting for an advocate to be appointed by his family within 14 days but he later came to know that this was not possible. The applicant also states that he prepared his appeal and handed it to the prison office who failed to file the same.

12. These two statements are contradictory and incredible by themselves. It is either the applicant was late as he waited for an advocate to be hired for him by the family or that he filed an appeal through the prison authorities which may have been misplaced.

13. Assuming that the applicant prepared his appeal and handed it to the prison officer as he claimed, it would be expected that he would have followed it up with the prison authorities to know its fate.

14. On hiring an advocate, I do not find this satisfactory for the simple reason that the practice in Kenyan prisons is that the prisoners file appeals on their own in the first instance but have the option to hire a lawyer later to take up the appeal. In the event that a lawyer comes on board, he may file an amended petition of appeal.

15. It is my considered view that the applicant has not given a satisfactory reason why he delayed to file his appeal for about one year. Time is provided by the law is of essence and it must be complied with.

16. The applicant has an obligation to explain the long delay. He has not discharged that burden.

17. I find that this application has no merit and it is hereby dismissed.

18. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 3<sup>RD</sup> DAY OF JUNE, 2019.**

**F. MUCHEMI**

**JUDGE**

**In the presence of the applicant**