

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL MISC. APPLICATION NO. 12 OF 2019

PAUL WAMBUA KIEMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. Paul Wambua Kiema was convicted of the offence of **Rape** contrary to **Section 3(1)** as read with **Section 3(3)** of the **Sexual Offences Act** on the **3rd June, 2016**. He was sentenced to **ten (10) years imprisonment**.

2. Satisfied by the conviction and sentence meted out he opted not to appeal.

3. On the **25th February, 2019** he filed a Notice of Motion seeking to appeal out of time on the ground that the Court delayed in providing him with a copy of the Judgment. However, at the hearing of the Application he stated that he never appealed at the outset because he was satisfied with the sentence meted out but he wished to appeal because the time he spent in custody during trial was not taken into consideration.

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. This is a matter where the Applicant did not seek to obtain a copy of the Judgment following contentment of Judgment of the trial Court which imposed the minimum sentence prescribed for the offence he committed. He has waited for three (3) years prior to remembering that he could be heard at an appellate stage. This does not amount to a good cause.

6. Therefore, the Application is not meritorious. Accordingly, it is dismissed.

7. It is so ordered.

Dated, Signed and Delivered at Kitui this 13th day of June, 2019.

L. N. MUTENDE

JUDGE