

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CRIMINAL APPLICATION NO. 12 OF 2019

(CORAM: R. E. ABURILI - J.)

PHILIP OYIER KWASU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. *Section 349 of the Criminal Procedure Code* stipulates that an appeal against judgment of a trial court shall be filed within 14 days of the date of such judgment, conviction or sentence.

2. However, the proviso thereto is clear that the court to which an appeal is made may enlarge such time for filing of the appeal where it is proven that the appellant has been unable to obtain proceedings or copy of judgment within reasonable time.

3. The Applicant in this case is Philip Oyier Kwasu. He has sought leave of Court to file an appeal out of time. He has sworn an affidavit and annexed documents which include letters of request made before the trial court on 22/1/2019 and 5/2/2019 seeking for proceedings and judgment. He also paid for the same as per the copies of receipts attached. This was in Cr. Case No. 1129/2016. The sentence was passed on 26/1/2019.

4. In my humble view, the applicant has demonstrated to the satisfaction of the court that he has made efforts to obtain the trial court record which has not been availed to him and that the delay in filing the appeal was not occasioned by him but the trial court's failure to avail to him copies of proceedings and judgment to enable him challenge the decision thereof.

5. The right of appeal is an imperative one. The prosecution though opposing the application has not demonstrated what prejudice will be occasioned to them if the leave sought is granted to enable the appellant ventilate his grievances.

6. In the premises, despite delay which was not occasioned by the applicant. Justice can still be done by allowing the application.

7. Accordingly, I allow the application dated 25/5/2019 and grant the applicant leave to file his appeal out of time challenging the proceedings, judgment, conviction and sentence passed on 22/1/2019 in Siaya PM's Court Cr. Case No. 1129/2016. The intended appeal shall be filed and served within 7 days of today. Orders accordingly.

Dated, Signed and Delivered in open court at Siaya this 3rd Day of June 2019.

R.E. ABURILI

JUDGE

In the Presence of:

Mr. Okachi, SPPC for State

Court Assistants: Brenda and Modestar

Applicant, Philip Oyier Kwasu (present in person)