

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISCELLANEOUS CRIMINAL APPLICATION NO. 52 OF 2016

GEORGE MUCHEMI NDIRANGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant sought the leave of this court to file an appeal out of time as per Article 50 (2) (q) and 50 (6) of the Constitution of Kenya and section 351 of the Criminal Procedure Code. The same was sought by a notice of motion filed on 21st April, 2016.

2. In response thereto, the prosecuting counsel Mr. Machogu filed a replying affidavit on 30th June, 2017 contending as follows. That the appellant was given the requisite 14 days period under section 349 of the Criminal Procedure Code (**CPC**) within which to lodge an appeal upon delivery of the judgment on 30th November, 2007. That despite being so given, the appellant did not file a notice of intention to appeal or an appeal within the stipulated period and only sought leave to file an appeal almost ten (10) years from the date of the sentence. That the appellant has not demonstrated that the delay in lodging an appeal was occasioned by his own making but by inability to obtain court proceedings and judgment within reasonable time. That he has also failed to demonstrate any steps, if any, he took to obtain the certified copies of the proceedings and judgment of the trial court as required under section 349 of the CPC. That he has not demonstrated why it took him almost ten (10) years to lodge this appeal. That due to the foregoing, the application is frivolous, vexatious, incompetent and improperly before this court.

3. In rebuttal, the applicant filed a further affidavit wherein he alleged that he lodged an appeal through the Officer in Charge Naivasha Main Prison. That he on 1st October, 2013 wrote a letter to the Registrar of Court of Appeal through the Officer in Charge, GK Prison Naivasha requesting him to serve with an appeal number accorded and the letter was forwarded by the prison authorities on 4th October, 2013. That he has since not been provided with the proceedings.

4. At the hearing of the application, the applicant reiterated his averments in the affidavit and the prosecutor, Mr. Machogu relied on his affidavit.

5. I have given due consideration to this application. There is no doubt that the applicant has demonstrated that he made an attempt to seek proceedings and by that an inference is made that he had the intention to appeal only for the proceedings not to be availed to him. Bearing that in mind and the applicant's right to fair trial and appeal, I find merit in this application and order that the appellant does lodge his appeal within the next 14 days from the date of this ruling.

It is so ordered.

Dated and delivered at Machakos this 2nd day of May, 2018.

D. K. KEMEI

JUDGE

In the presence of:

George Muchemi Ndirangu - the Applicant

Saoli - for the Respondent

Kituva - Court Assistant