



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
MISC. CRIMINAL APPLICATION NO.59 OF 2018
BETWEEN
REPUBLIC.....APPLICANT
AND
AMOS SIFUNA WAFULA.....RESPONDENT
RULING

1. By a notice of motion dated 15.8.18 brought under Section 349 of the Criminal Procedure Code Cap 75 Laws of Kenya; the applicant prays for orders the Honourable Court be pleased to allow the filing of the Petition of Appeal against the Judgment in **BUNGOMA CHIEF MAGISTRATE'S CRIMINAL CASE NO. 805 OF 2015**

2. The application is based on the grounds that among others that:

- i. The proceedings were not obtained until 10th May, 2018
- ii. That the delay is not inordinate

3. The application is supported by the affidavit sworn on 15th August, 2018 by Chrisantus Juma Wafula, the complainant. He avers that he applied for proceedings on 20th May, 2018 and they were not availed until 10th May, 2018. Annexed to the supporting affidavit is a copy of a letter marked **CJ-1**, dated 20th February, 2018 requesting for proceedings.

4. The application is opposed on the basis of grounds of opposition filed by the respondent on 3rd October, 2018 in which he urges the court to disallow the application.

5. Section 349 of the Criminal Procedure Code provides as follows:

“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.”

6. The record shows that the applicant has deliberately avoided to specify when the impugned judgment was delivered. I however suppose that it must have been on or about 20th February, 2018 when the

complainant alleges to have applied for the proceedings.

7. If that be the case then, this application was filed on or about 6 months from the date of the impugned judgment. The complainant avers that he applied for proceedings on 20th February, 2018 and they were not availed until 10th May, 2018. A copy of a letter marked **CJ-1**, dated 20th February, 2018 by which he allegedly requested for proceedings is not stamped by the court. It has therefore not been demonstrated that the letter was delivered to court. It has thus not been proved that the delay was caused by the inability of the state or the complainant 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.

8. Consequently, the notice of motion dated 15th August, 2018 is considered and found to have no merit and it is dismissed.

DELIVERED AND SIGNED AT BUNGOMA THIS 9th DAY OF November 2018

T. W. CHERERE

JUDGE

In the presence of-

Court Assistants - Ribba & Diannah

For the State/Applicant

Respondent