



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

CRIMINAL MISC. APPLICATION NO. 13 OF 2016

CHRISTOPHER MWANIA.....APPLICANT

Versus

REPUBLIC.....RESPONDENT

(Being an appeal from conviction and sentence from Senior

Principal Magistrate's Court at Kajiado dated 18/4/2016)

RULING

CHRISTOPHER MWANIA, the applicant herein filed a chamber summons dated 5/7/2016 seeking for an order to appeal out of time against the impugned judgement passed by the magistrate court at Kajiado on 18/4/2016. The applicant's application is supported by the grounds that the appeal has high chances of success. In support of the application the applicant filed an affidavit dated same day. The applicant deposed that he was sentenced to seven (7) years imprisonment for the offence of breaking and stealing contrary to section 304 of the Penal Code.

The reason for the delay is explained to be failure to secure an advocate in time to file an appeal on his behalf. The learned counsel appearing on behalf of the respondent opposed the application contending that no sufficient reasons have been placed before this court.

I have considered the rival submissions made by the applicant and learned counsel for the respondent. Under the proviso of section 349 the grounds for enlargement of time are failure and 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. I have considered the application and the applicant has not brought himself within the proviso of section 349 of the Criminal Procedure Code.

Sufficient cause means that the applicant should not have acted in a negligent manner or there was want of a bonafide on his part on view of the facts and circumstances of the case. The applicant has remained in action since the conviction and sentence 18/4/2016. The applicant was not represented by an advocate in the lower court proceedings. The applicant must therefore satisfy the court that he was prevented from presenting his case due to non-availability of an advocate. There was no application made. There is no strait jacket formula in interpreting the provisions of section 349 on enlargement of time on appeal. What the court has to consider is to ensure substantial justice is done as long as negligence, in action or lack of bonafide cannot be imputed on the part of the applicant. The statute prescribes the period of 14 days. The court has no power to extend the period of limitation on equitable grounds unless sufficient cause has been shown.

A result flowing from a statutory provision is never an evil. The provision may cause hardship, or inconvenience to a particular party but the court has no choice but to enforce it giving full effect. The law is hard but it is the law!

According to *Halbury Laws of England Vol. 24 pg 181 – 330 Policy of Limitation Acts*, the courts have expressed at least three different reasons supporting the existence of the statute of limitations namely:

1. That long dormant claim have more of cruelty than justice in them.
2. That a defendant might have lost the evidence to disapprove a state claim.
3. That person with cause of action should pursue them with reasonable diligence.

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance of deprivation of what may have been acquired in equity and justice by long enjoyment or which may have been lost by a party's own inaction negligence or laches. There must be adequate and enough reason which prevented the accused to approach the court within limitation. No court could be justified in conducting such an inordinate delay by imposing any condition whatsoever. The applicant has not justified the criteria under the provision of section 349 of the Criminal Procedure Code.

In view of the above the application is lost and accordingly dismissed.

Dated, delivered and signed in open court at Kajiado on 13/3/2017.

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R. NYAKUNDI

JUDGE

In the presence of:

Applicant present

Mr. Akula for Director of Public Prosecution present

Mateli Court Assistant present