

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISC. APPL. NO. 106 OF 2016

JOHN MUNGUTI1ST APPLICANT

RICHARD MUNGUTI2ND APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING OF THE COURT

1. The application before the court is a Notice of Motion dated and filed herein on **9th September, 2016**. The application seeks for orders that the same be certified urgent on priority basis, and that the applicant be granted leave to appeal outside the statutory period, and that costs do abide the application.
2. The application is premised on the grounds that judgment was made on **8th February, 2016** and the applicants were not represented at the trial court. Fourteen (14) days within which to appeal have since elapsed and that the applicants have instructed the advocate to pursue the appeal.
3. The application is support by the affidavit of the two appellants sworn on **8th September, 2016** in which the applicants depone they were sentenced to two (2) years imprisonment on **8th February, 2016**, a decision which aggrieved them and now they have instructed their counsel to persue an appeal, and that they have a meritorious appeal.
4. The State opposed the application vide Grounds of Opposition filed herein on **29th September, 2016**. The State states that **Section 349** of the **Criminal Procedure Code** provides for Limitation of time to lodge an appeal after the court delivers its decision or sentencing. The prosecution's case is that the trial court delivered its decision on the **8th February, 2016** where the applicants were granted fourteen (14) days to appeal if aggrieved by the decision of the trial court. The applicants have not demonstrated that the delay to lodge the appeal out of time was not of their own making, but was caused by the inability to obtain the court judgment within reasonable time of applying. The prosecution submitted that the applicants have not demonstrated any reasonable steps (*if any*) that they undertook to obtain the judgment as required under **Section 349** of the **Criminal Procedure Code**. The State submitted that this application is frivolous, vexatious, incompetent and improperly before court and thus it is an abuse of the court process.
5. I have carefully considered the application. There is absolutely no attempt by the applicants to justify the delay for filing appeal within fourteen (14) days from the date of judgment or soon thereafter. There is no demonstration of any steps taken or challenges that the applicants may have faced. In my view there is a reason why fourteen (14) day are imposed within which an appellant may appeal. Where there are justifiable grounds, that period can be extended. No justification, not even a feeble one, has been urged in this matter. The application is frivolous and I dismiss it without hesitation.

DATED AND DELIVERED AT MACHAKOS THIS 1ST DAY OF DECEMBER, 2016.

E. OGOLA

JUDGE

In the presence of:

Mr. Mamba for State

Mr. Tamata for accused persons

Court Assistant – Mr. Munyao