

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Miscellaneous Criminal Application 26 of 2009

ALFRED KIZITO APUT.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

By his Notice of Motion dated 24th February 2009 the applicant herein is seeking leave to file his appeal out of time. Mr. Getanda, Counsel for the Applicant, submitted that the applicant was convicted in Kakamega Chief Magistrate Criminal Case No. 3365 of 2006. Judgement was delivered on 22nd February, 2008 and the applicant applied for certified proceedings on 25th February, 2008.

The proceedings were issued to the applicant on 5th December, 2008 and were quite bulky. By then time to file the appeal had lapsed. Counsel further submitted that the appeal is arguable and that the delay was not deliberate.

Mr. Karuri, learned State Counsel, opposed the application. He contended that the proceedings were issued to the applicant on 5th December, 2008 yet the current application was filed on 10th March, 2009. This delay cannot be attributed to the court but to the applicant. Learned State Counsel submitted that the delay was deliberate and the court should not indulge the applicant.

In his supporting affidavit, the applicant has exhibited a letter dated 25th February, 2008 by his counsel requesting for certified copies of the proceedings. He paid for the proceedings on 4th March, 2008. The applicant has not attached copies of the certified proceedings to enable the court verify the date when the proceedings were certified. He contends that he was given the proceedings on 5th December, 2008.

The applicant contends that the delay in filing the Appeal was caused by the court as it took some time to have the proceedings typed. Section 349 of the Criminal Procedure Code empowers the court to enlarge time for filing of Appeal. If the applicant was supplied with the proceedings on 5th December, 2008, then by then time to file an appeal had already lapsed. Still the applicant had to make an application to be allowed to file his appeal out of time.

I am satisfied that the delay herein is not inordinate and was not caused by the applicant. The courts should not shut out a litigant who believes that he was wrongly convicted. The applicant is granted leave to file his appeal out of time. The Appeal should be filed within fourteen (14) days from the date of delivery of this ruling.

Delivered, dated and signed at Kakamega this 7th day of October, 2009.

SAID J. CHITEMBWE

J U D G E