



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Criminal Miscellaneous Application 77 of 2009

BENSON MAKUNDA APPLICANT

V E R S U S

REPUBLIC RESPONDENT

RULING

The application Applicant was charged with two counts of the offence of obstructing a Police Officer contrary to Section 253 (b) of the Penal Code. He was also charged with incitement to violence contrary to section 96 of the Penal Code. He pleaded guilty to all the three counts and was sentenced to 4 years imprisonment on

17th December, 2008.

The Applicant filed the Notice of Motion dated 10th March 2009 seeking leave to file his Appeal out of time. The appeal is against the conviction and sentence. Mrs. Muleshe, learned counsel for the Applicant, submitted that the sentence was defective. The appellant could not get the proceedings that is why the Appeal could not be filed within time.

Mr. Karuri, learned State Counsel opposed the Appeal. He submitted that there is no evidence that the applicant applied for proceedings. The application was filed in June, 2009, six months after conviction. This shows that the Applicant was not interested in filing the appeal which is an afterthought.

The proceedings indicated that the applicant was convicted on 17th December, 2008. The typed proceedings

were certified on 12th January, 2009. This was after 14 days had already lapsed. The application to extend time to file the Appeal is dated 10th March, 2009 but was filed on 3rd June, 2009.

It is clear that the applicant had the intention of filing an Appeal as the proceedings were typed and certified within one month after conviction. It is only fair that the applicant be allowed to pursue his intended Appeal. I do allow the application. The applicant to file his appeal within fourteen (14) days hereof.

Dated, Signed and Delivered at Kakamega, this 2nd day of November, 2009.

SAID J. CHITEMBWE

J U D G E