

UGANDA / JUDGMENT

Njagi and Another v Rex (Criminal Appeal Nos. 182 and 200 of 1950)

[1950] EACA 77 (1 January 1950)

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COURT

East African Court of Appeal

BEFORE

Nihill, C.J, Thacker J

CASE / FILE NUMBER

Criminal Appeal Nos. 182 and 200 of 1950

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APPELLATE CRIMINAL

Before Sir Barclay Nihill, C. J., and THACKER, J.

(1) KARIUKI s/o NJAGI,

(2) DAUDI SOLOMON,

Appellants (Original Accused) **$\mathbf{v}$** **REX, Respondent (Original Prosecutor)****Criminal Appeal Nos. 182 and 200 of 1950**

(Appeal from decision of R. M.'s Court at Nyeri—A. C. Harrison, Esq.)

Criminal Procedure Code—Section 349—Appeal—Limitation—Leave to appeal out of time—Good cause—Delay in obtaining copies—Line drawn between delay which is no fault of appellants and delay preventable by the exercise of due diligence—Future practice of Court—No application to $\mathbf{b}$ $\mathbf{e}$ entertained, except in very special circumstances, where appeal is filed more than 14 days after obtaining copies.

Consolidated appeals from conviction and sentence of Resident Magistrate's Court, Nyeri.

On 15th February, 1950, appellants, who were tried together, were convicted on two counts of arson. Neither of the accused was represented at the hearing. On 22nd March, 1950, some seven days out of time, the appeal of first accused, prepared on his behalf by the Officer in Charge of Nyeri Prison, was filed. On 26th April, 1950, 40 days out of time, the appeal of second accused was filed by the advocate now representing him, with an affidavit to the effect that copies of the judgment and proceedings were not received till the 6th April, 1950.

Held (6-7-50).—(i) That, while in the past the Court has shown indulgence in accepting appeals filed out of time, by reason of the delay in obtaining copies of the judgment and proceedings, owing to the shortage of staffs in Resident Magistrates' Courts, a line must be drawn between delay which is no fault of the exercise of due diligence.

(ii) That while the delay in the case of the first accused falls in the first of the above categories, and that in the case of the second accused falls in the second, since both appellants were tried together it might lead to embarrassment if the appeal of the one were admitted and that of the other rejected.

(iii) That in future the Court should not except in very special circumstances, entertain an application for leave to appeal, where the memorandum of appeal is filed by an advocate more than 14 days after the date on which it is proved that he obtained a copy of the judgment.

Both appeals admitted.

First appellant present, unrepresented. Kapila for second appellant. Templeton, Crown Counsel, for the Crown.

JUDGMENT.—In these two appeals which we have consolidated, the appellants apply for leave to appeal out of time. The two appellants were tried together before Resident Magistrate, Nyeri, on two counts alleging arson and were convicted on 15th February, 1950. Neither of the accused were represented at the hearing. In respect of the first appellant a memorandum of appeal was prepared, on his behalf, by the Officer in Charge of Nyeri Prison, and was filed

on 22nd March, 1950, some seven days out of time. In the case of the second appellant, an affidavit has been lodged by the advocate who is now representing him to the effect that on the day of his conviction an application was made to the Magistrate's Court at Nyeri, for copies of the judgment and proceedings, and that these were not received until 6th April, 1950, that is to say, about three weeks after the time for entering an appeal had expired. Further delay then occurred and the appellant's appeal was not filed until 26th April, 1950, about 40 days out of time. We are well aware that owing to shortage of staff in the District Magistracies advocates often experience serious delay in obtaining copies of judgments and proceedings, and it has been the practice of this Court to grant indulgence in cases where it is shown by affidavit that the submission of an appeal out of time has been due to this factor. Nevertheless, we feel that a line must be drawn between delay which is no fault of an appellant or his advocate and delay which is preventable by the exercise of due diligence. In the case of the second appellant now before us, we are far from satisfied that any good cause has been shown us for the delay in some 20 days which ensued

between the receipt of the judgment and proceedings and the filing of the appeal. Nevertheless, we are aware that an impression is abroad that advocates may accept indulgence from this Court up to 30 days after the receipt by them of a copy of the judgment and that in many cases appeals have been heard which have been filed within that period. Furthermore, in this case we are satisfied that the delay which occurred in the submission of the appeal of the first appellant was an excusable one, and as, the second appellant was tried jointly with him and convicted on the same evidence, it might lead to embarrassment were we to hear the appeal of the one accused and refuse to entertain the appeal of the other.

We therefore propose, in this instance, to allow the application for leave to appeal out of time in respect of both appellants and their appeals will be set down for hearing.

We must add this, however, that after consultation with such of our brethren as were available, we have come to the conclusion that in future this Court should not, except, in very special circumstances, entertain an application for leave to appeal, where the memorandum of appeal is filed by an advocate more than 14 days after the date on which it is proved that he obtained a copy of the judgment.

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