

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISCELLANEOUS CRIMINAL APPLICATION NO. E025 OF 2021

SAMSON OMAMO KODANDE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. I have considered the application dated 18.1.2021 under Certificate of Urgency. I am satisfied that the application is urgent. I certify it as urgent.

2. On review of the Order of this court made on 2.7.2019 striking out the appeal for being filed out of time without leave of the court, I have perused the annexures to the supporting affidavit sworn by Perez Odero Advocate. I observe that Counsel filed the appeal within the time granted in the order for leave made on 5.3.2019 vide High Court Criminal Miscellaneous Application No. 8 of 2019 but when filing the said Appeal vide Petition of appeal dated 14.3.2019, she did not annex or even cite the order granting leave to appeal out of time.

3. Accordingly, there is no error on the part of this court when it struck out the appeal. Furthermore, the application herein has been brought with inordinate delay. However, Justice can still be done to the applicant/appellant as it is counsel that delayed to move the court and failed to annex or cite the order for leave to appeal out of time. This being a criminal case, and in order to accord the appellant the opportunity to ventilate his grievance in the exercise of his right of appeal, I exercise discretion and review the order of 2.7.2019 striking out the Criminal Appeal No. 18 of 2019 for being incompetent.

4. I set aside that order striking out the appeal and reinstate the said appeal for hearing interpartes. The applicant herein to extract this Ruling/Order and file in Court in HCRA No. 18 of 2019 and the Office of Director of Public Prosecutions and move the Court expeditiously.

5. This file is closed.

6. Orders accordingly.

Dated, Signed and Delivered at Siaya this 19th day of January, 2021

R.E.ABURILI

JUDGE