

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIM. APPLN NO. 130 OF 2018

JAKHIM KOOME KIOTHIAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Intended Appeal from the conviction and sentence on the SRM'S Court at Meru In Crim. Case No. 1824 of 2014)

R U L I N G

1. **Jakhim Koome Kiothia (“the applicant”)** was arraigned before the Meru Senior Resident Magistrates Court charged with the offence of robbery with violence contrary to **section 296 (2) of the Penal Code**. He denied the offence, was tried and convicted accordingly. He was subsequently sentenced to suffer death.
2. The applicant has now taken out a Motion on Notice under **section 349 of the Criminal Procedure Code** for leave to appeal out of time. The Motion was supported by the applicant’s own affidavit sworn on 22nd November, 2018. The grounds are that after conviction and sentence, he duly filed an appeal against the said decision but due to some anomaly, his appeal cannot be located at the registry.
3. The application was not opposed by the Director of public Prosecutions when it came up for hearing on 17th December, 2018.
4. I have considered the deposition of the applicant. The applicant faces the ultimate sentence, death. It is alleged that the decision sought to be appealed against was delivered on 9th October, 2018. The applicant has alleged that he lodged his appeal within time but due to an error, the same cannot be traced. He has sought leave to file a fresh one.
5. To my mind, the fact that there is an allegation that the applicant had earlier on complied with the law but for some error, coupled with the fact that the present Motion was brought timeously, together with the extreme sentence metted out on the applicant, it is only just and fair that he be given another chance to test the decision he is aggrieved with.
6. Accordingly, I find the application to be meritorious and I allow the same. The Petition of Appeal should be filed within 14 days from the date hereof.

It is so ordered.

DATED and **DELIVERED** at Meru this 21st day of February, 2019.

A. MABEYA

JUDGE