

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION CASE NO. 49 OF 2017

DAVID MAWIRA KINOTI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. DAVID MAWIRA KINOTI has applied for leave to appeal out of time. He is aggrieved against the judgment of this Court (Hon. Wendoh J.) made on 28th July, 2015 whereby he was convicted of the offence of murder contrary to *section 203 as read with section 204 of the Penal Code* and sentenced to suffer death.
2. The time for appealing expired on 11th August, 2015. The present application was lodged on 17th November, 2017. There is therefore a delay of two (2) years and four (4) months. That is in all circumstances, inordinate.
3. The reasons advanced for the delay is that although he preferred the appeal within the stipulated time of 14 days, there occurred a filing problem between the Prisons Documentation Office and this Court's registry whereby he was unable to be allocated an appeal number. The applicant has contended that the intended appeal has overwhelming chances of success.
4. Having considered the case in its entirety, I find the reasons advanced for the delay to be credible. It is not farfetched that, in the normal course of events, there can be breakdown of communication between this Court's registry and the Prisons Department wherein the applicant is being held and a period of less than three years to take action is considerable. To my mind, that is a plausible explanation.
5. Further, and what weighed heavily on my decision, considering the long sentence which the applicant is serving and that he has only spent three years from the possible death sentence meted out on him, it is just and fair to grant the Applicant an opportunity to ventilate his case before a higher Court for consideration.
6. Accordingly, leave is granted as prayed. The Notice of Appeal be filed within 14 days of the date hereof.

DATED and DELIVERED at MERU this 24th day of January, 2018.

A. MABEYA

JUDGE