

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION CASE NO. 48 OF 2017

ISAIAH MWENDAAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. **ISAIAH MWENDA** has applied for leave to appeal out of time. He is aggrieved against the judgment of this Court (Hon. Wendoh J.) made on 14th November, 2014 upholding the judgment of the Chief Magistrate's Court, Meru wherein he had been convicted with the offence of defilement contrary to **Section 8 (2) of the Sexual Offenses Act** and sentenced to 20 years imprisonment.
2. The time for appealing expired on 29th November, 2014. The application was lodged on 11th August, 2016. There was therefore a delay of one (1) year and nine (9) months. That is in all circumstances, inordinate.
3. The reasons advanced for the delay is that the applicant's relatives had promised to appoint an Advocate who was to lodge the Appeal. That the applicant waited but realized that none had been appointed. That as a result he was unable to lodge the appeal within time. 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. He made the application within two years of the judgment. 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 out of the twenty he is serving, it is just and fair to grant him an opportunity to ventilate his case before a higher Court for consideration.
6. Accordingly, leave is hereby 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