

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION CASE NO. 3 OF 2018

WAKO JATTANIAPPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. WAKO JATTANI has applied for leave to appeal out of time. He is aggrieved against the judgment of this Court (Hon. Kiarie J.) made on 27th April, 2017 upholding the judgment of the Principal Magistrate's Court, Isiolo wherein he had been convicted with the offence of rape contrary to ***Section 3 (1) (a) and (c) of the Sexual Offences Act No. 3 of 2006*** and sentenced to 20 years imprisonment..
2. The time for appealing expired on 1st May, 2017. He lodged the present application on 17th January, 2018. There is therefore a delay of nine (9) months. That is in all circumstances, inordinate.
3. The reasons advanced for the delay is that there occurred a filing problem between the Prisons Documentation Office and this Court's registry whereby he was unable to lodge his appeal in 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 a delay of just nine months 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. 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 less than a year out of the twenty he is to serve, 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