

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION CASE NO. 47 OF 2017

PETER KIMATHIAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. PETER KIMATHI has applied for leave to appeal out of time. He is aggrieved against the judgment of this Court (Hon. Lesiit J.) made on 12th May, 2011 whereby the applicant was convicted of the offence of murder contrary to *Section 203* as read with *section 204 o the Penal Code*.

2. The time for appealing expired on 26th May, 2011. The application was lodged on 2nd December, 2017. There is therefore a delay of six (6) years and six (6) 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 do not find the reasons advanced for the delay to be credible. While 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. Six and a half years is a long period for the applicant to wait to discover that his appeal has not been lodged. No copy of any such document was provided. The conclusion I make is that the applicant must have been satisfied with the decision of the High Court and decided not to appeal. To my mind, that is a plausible explanation.

5. I have considered the long sentence or the serious sentence that was metted out to him. Be that as it may, I am of the view that if he had considered it to be such serious, he would have exercised his right to appeal in less than, say, three years.

6. Accordingly, leave is denied and the application dismissed.

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

A. MABEYA

JUDGE