

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS CRIMINAL APPLICATION NO. 4 OF 2018

JAMES MWIRIGI CHABARI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Vide a Summons in chambers dated 19th September, 2018, JAMES MWIRIGI CHABARI has applied for leave to file an appeal out of time against the conviction and sentence in *Nkubu Criminal Case No. 1464 of 2014* delivered on 7th September, 2016. The application is supported by the affidavit of the applicant sworn on 4th January, 2018.

2. He swore that he had been convicted for the offence of incest contrary to *section 20 (1) of the Sexual Offences Act* by Hon. M. N. Idagwa on 7th September, 2016. That he was sentenced to serve life imprisonment. That he did not appeal within the 14 days stipulated time because his family had promised to file an appeal for him but they failed to do so; hence the delay. He therefore urged he be given a chance to lodge his appeal.

3. The state did not oppose the application. I have considered the affidavit in support. The decision sought to be appealed against was delivered on 7th September, 2016. The time for appeal expired on 21st September, 2016. The present application was lodged in this court on 5th February, 2017. The delay was for sixteen (16) months. The delay is inordinate.

4. I have considered that the applicant expected his family to lodge an appeal against his conviction and sentence. I have also considered that the applicant is in custody and the precarious position he finds himself in pursuing his liberty. I have seen the Petition of appeal which sets out several grounds of appeal which the applicant proposes to agitate on appeal.

5. Further to the foregoing, I have noted that the applicant is now serving a long sentence of life. Taking into consideration all the foregoing, I am inclined to exercise my discretion in favour of the applicant and give him an opportunity of having his case considered by a second court.

6. Accordingly, I allow the application. I direct that the Petition of Appeal dated 19th December, 2017 be deemed as duly filed and served. An appeal file be opened and the number thereof together with this ruling be served upon the applicant who is in custody.

It is so ordered.

DATED and **DELIVERED** this 20th day of February, 2018.

A. MABEYA

JUDGE