



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISC. CR. APPLN NO. 9 OF 2018**

**DOMINIC MWIRARIA .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

1. By his Motion on Notice dated 16<sup>th</sup> March, 2018 **DOMINIC MWIRARIA “the applicant”** has applied for leave to appeal out of time to the Court of Appeal against the decision of this court (Gikonyo J.) made on 20<sup>th</sup> February, 2018 dismissing his appeal against his conviction and sentence to suffer death for robbery with violence.

2. The grounds upon which the application is made are set out of the Motion and his supporting affidavit sworn on 16<sup>th</sup> March, 2018. These are that; his appeal to this court from the Tigania SRM court was dismissed on 20<sup>th</sup> February, 2018; that he was unable to get proceedings and judgment to prepare and lodge his appeal in time as required by law and that his appeal has overwhelming chances of succeeding. The applicant therefore prayed that his application be allowed.

3. I have considered the affidavit on record. The jurisdiction of this court to entertain this application is derived from **section 7 of the Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya**, which provides that:-

***“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.***

**...”**

4. The judgment sought to be appealed against was delivered on 27<sup>th</sup> February, 2018. The present application was lodged on 16<sup>th</sup> March, 2018. The time for lodging the notice of appeal is 14 days from the date of the decision sought to be appealed against. The time therefore expired on 6<sup>th</sup> March, 2018. There was a delay of only 10 days.

5. To my mind, a delay of 10 days is not unreasonable. It is excusable having in mind that the applicant was in custody. Further, although the lodging of a notice of appeal in the Court of Appeal does not require the applicant to have had the proceedings and the judgment sought to be appealed against, I will excuse the applicant since he is a lay man and may not have been aware of that fact.

6. In the premises, I am satisfied that the application has merit and I allow the same. The Notice of Appeal dated 16<sup>th</sup> March, 2018 is hereby deemed to have been filed within time.

**DATED** and **DELIVERED** at Meru this 16<sup>th</sup> day of April, 2018.

**A. MABEYA**

**JUDGE**