

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CRIMINAL APPLICATION CASE NO. 22 OF 2018

MIREGI LEKUMUSA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. **MINGI LEKUMUSA (“the Applicant”)** has applied for leave to appeal out of time. He is aggrieved against the judgment and conviction of Hon. Maundu in the **Isiolo Cr. Case. No. 229 of 2011 R vs. Miregi Lekumusa** made on 20th January, 2012 in which he was sentenced to suffer death for robbery with violence contrary to **section 296 of the Penal Code Cap 63 of the Laws of Kenya**.
2. The time for appealing expired on 15th January, 2012. He lodged the present application on 6th March, 2018. There is therefore a delay of one (5) years and ten (10) months. That, in my view, is in all circumstances, inordinate.
3. The reasons advanced for the delay is that the relatives of the applicant had promised to hire an Advocate for him to prefer an appeal to this court but they did not. That as a result he was not able to 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 the delay not to be credible. It is not feasible that a family that had promised to hire an Advocate could fail to do so and the applicant wait for nearly six years to prefer the present application. To my mind, that is not a plausible explanation.
5. I have considered the sentence metted out to the applicant. The applicant was sentenced to suffer death which is the ultimate sentence in our penal system. Six years may be a very long time to allow a convict who has undergone a legal process and is serving a lawful sentence to come back to appeal against such an old decision.
6. I have considered that the applicant has not had an opportunity to have his case reconsidered by a second court. That the sentence metted out on him is the most severe one in our penal system. That in the event he has a second bite on the cherry, there is a likelihood of either having a different decision arrived at or the sentence being reconsidered now that the Supreme Court of Kenya has ruled that the death sentence is unconstitutional.
7. In view of the foregoing, I am persuaded that I should allow the applicant a chance to have his case re-looked afresh by a different court.
8. Accordingly, I allow the application. The petition of appeal annexed to the application is hereby deemed as filed with leave. Let a Criminal Appeal file be opened and the petition be served upon the Director of Public Prosecutions.

It is so ordered.

DATED and DELIVERED at MERU this 28th day of June, 2018.

A. MABEYA

JUDGE