

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CR. APPLICATION NO 22 OF 2018

MIREGI LEKUSUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **MIREGI LEKUMUSA (“the applicant”)** has by his motion on Notice dated 6th March 2018 applied for leave to appeal out of time against the decision of Hon. Maundu made on 20th January, 2012 convicting and sentencing him to suffer death for the offence of robbery with violence.

2. The grounds upon which the application is made are set out in the undated supporting affidavit. These are that he was unable to appeal in time because his relatives had promised to hire an advocate to appeal on his behalf. That as a result he was unable to lodge the appeal in time as required by law and that his appeal has overwhelming chances of succeeding. The applicant therefore prays 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 time for giving notice of intention appeal from a judgement of high court 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 judgement sought to be appealed against was delivered on 20th January, 2012. The present application was lodged on 6th March, 2018. The time for lodging a notice of appeal is 14 days from the date of judgement sought to be appealed against.

5. Therefore the time for filling notice expired on 3rd of February 2012. There was a delay of 6 years 1 month and 3 days.

6. To my mind a delay of more than six years is unreasonable thus not excusable. I considered the fact that the accused was in custody and could not hire an advocate without the help of the relatives but still find the excuse not convincing to allow application which is delayed for more than a duration six years.

7. The reason of lack of trial judgement immediately before expiry of the stipulated time is not sufficient to convince the court to extend the time for appealing. The long delay in my view characterizes the applicant’s satisfaction with the judgment in question.

8. In the premises I allow the application. Let the petition of appeal be deemed as filed with leave.

9. Be that as it may, since the sentence is so severe, death, I bend backwards to give the applicant a chance of having his case reheard on appeal.

DATED and DELIVERED at Meru this 28th June, 2018.

A. MABEYA.

JUDGE.