

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CR. APPLN NO.13 OF 2018

CONSOLATA NKOMO MURUNGI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **CONSOLATA NKOMO MURUNGI (“the applicant)** has by her Motion on Notice dated 31st May, 2018, applied for leave to appeal out of time to the Court of Appeal against the decision of this court(R.V.P WENDO) convicting her on the charge of murder made on 30th October, 2015.

2. The grounds upon which the application is made are set out in the Motion and her supporting affidavit sworn on 25th May, 2018. These are that; after she was convicted and sentenced she had lodged an appeal within 14 days as stipulated by law but there was a filing problem between documentation office in prison and court registry and that her appeal has overwhelming chances of succeeding. The applicant therefore prays that her 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 30th October, 2015. The present application was lodged on 31st May, 2018. The time for lodging an appeal is 14 days from the date of decision sought to be appealed against. Therefore, the time for filing the notice expired on 13th November, 2015. The applicant however stated in her Motion that she had lodged an appeal within 14 days as stipulated by the law but there was a problem between documentation office in prison and court the registry. This caused the delay to be of 2years 5months.

5. To my mind a delay of 2 years and 5months seems unreasonable but in the circumstances it is excusable having in mind that it was caused by the documentation office and court registry and not the applicant. Further, the applicant had already lodged an appeal within the stipulated time and it would be unfair to deny her the right to appeal due to the fault of others. However the applicant could not have waited for such a long time to make this application. I will excuse the applicant for wasting time to file this application since she is a lay person 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 31st May, 2018 is hereby deemed to have been filed within time.

DATED and DELIVERED at Meru this 18th day of June, 2018

A.MABEYA

JUDGE