



**REPUBLIC OF KENYA**

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

**MISC. CR. APPLN NO.19 OF 2017**

**ZACHEUS MWENDA alias FRANCIS ..... APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

1 **ZACHEUS MWENDA alias FRANCIS (“the applicant”)** has, by his Motion on Notice dated 13<sup>th</sup> March, 2017, applied for leave to appeal out of time to the Court of Appeal against the decision of this court (R.P.V. WENDOH) made on 29<sup>th</sup> October, 2015 dismissing his appeal against his conviction and sentence to serve fifteen years imprisonment.

2 The grounds upon which the application is made are set out of the Motion and his supporting affidavit sworn on 13<sup>th</sup> March, 2017. These are that; his appeal to this court was dismissed on 29<sup>th</sup> October, 2015; that he did not lodge an appeal within 14 days as stipulated by the law, that the reason of not filing the appeal within time is that he was expecting his family to find him a lawyer but they failed to meet the necessary fees 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 the time for giving notice of intention to appeal from a judgment of the High Court or for making 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 29<sup>th</sup> October, 2015. The present application was lodged on 13<sup>th</sup> March, 2017. The time for lodging the notice of appeal is 14 days from the date of the decision sought to be appealed against. Therefore, the time for filing the notice expired on 12<sup>th</sup> November 2015. There was a delay of 1year and 3months.

5 To my mind, a delay of 1year and 3months is unreasonable. The excuse given by the applicant that he was waiting for his family to raise fees to find a lawyer is reasonable as the applicant has a right to an advocate and maybe his thoughts were he could only succeed with the help of an advocate. However, it does not satisfy me to be a good reason for the delay. This is because the applicant has not shown that he has been able to find an advocate after waiting for that period. Having not found an advocate shows that the applicant will continue the appeal without an advocate if he is allowed to appeal out of time. This shows that the applicant could still have been able to file an appeal without an advocate and thus his excuse is not sufficient.

6 In the premises, I am not satisfied that the application has merit and I dismiss the same. The Notice of Appeal dated 13<sup>th</sup> March, 2017 is hereby dismissed.

**DATED and DELIVERED at Meru this 18<sup>th</sup> day of June, 2018**

**A.MABEYA**

**JUDGE**