



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**MISC. CR. APPL. NO. 41 OF 2018**

**(CORAM: R. E. ABURILI - J.)**

**EMMANUEL OUMA OYOO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON APPLICATION**

The Applicant/Convict herein **Mr. Emmanuel Ouma Oyoo** was convicted and sentenced by the PM's Court Ukwala in Ukwala PM Cr. Case No. 45 of 2013 of the offence of incest contrary to **Section 20(1) of the Sexual Offences Act No. 3 of 2006** and sentenced to life imprisonment.

Being dissatisfied with the said conviction and sentence, he appealed to the High Court at Siaya vide Siaya HCCRA 34 of 2015 and after hearing the appeal, Hon. Makau J dismissed the appeal, affirmed the conviction and upheld the sentence imposed on the applicant.

The applicant was dissatisfied with the decision of the High Court and filed Notice of Appeal on 3<sup>rd</sup> July 2013 challenging the judgment delivered on 28<sup>th</sup> September 2018 which Notice was filed way out of the statutory period. He now seeks leave of Court to extend the period which the Notice of Appeal should have been filed and for leave to file an appeal as a poor person.

Further, in his application dated 7<sup>th</sup> April 2018, he claims that he lacks money for preparation of the record of Appeal due to his incarceration. In addition, he claims that his constitutional rights will be deemed if his application is not granted and that the intended appeal has high chances of success.

The application is supported by the affidavit sworn on 3<sup>rd</sup> July 2018.

I have considered the application which seeks an opportunity to file a second appeal, as stipulated in **Section 113 of the Court of Appeal Rules**.

However, in my humble view, no single question of law has been identified proper for determination by the Court of Appeal as a second Appeal only lies on points or questions of law.

Further, being lawfully imprisoned does not impoverish one. There is no sufficient material demonstrating that the application is not possessed of sufficient means to pay for preparation of record of appeal. The Notice of Appeal was filed long after the statutory paid, which delay is inordinate and unexplained.

Accordingly, the application as filed lacks merit and the same is hereby dismissed.

Applicant to serve sentence imposed by the trial court and as upheld by this court on appeal.

**Dated, Signed and Delivered at SIAYA this 31<sup>ST</sup> day of July 2018.**

**R.E. ABURILI**

**JUDGE**