

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CR. APPL. NO. 55 OF 2018

(MANSLAUGHTER)

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

MILTON OBOTE OGAYA *Alias ADEM*.....1ST APPLICANT

DANIEL OWINO OMONDI *Alias ISRAEL*.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicants; Milton Obote Ogaya and Daniel Owino Omondi were convicted of the offence of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code** by Hon. Justice J.A. Makau on 8th December 2017 and sentenced to serve 11 years imprisonment.

The Applicants were ably represented by an advocate, Mr. Okello. No application for proceedings and judgment was ever made to signify the Applicants' intention to appeal to the Court of Appeal.

However, on 30/1/2018, they filed a joint motion under **Rule 113 of the Court of Appeal Rules** seeking leave of waiver of Court fees and extension of the time for filing Notice of Appeal out of time.

In their joint affidavit, the applicants claim that they cannot raise court fees required for preparation of their record of appeal due to their incarceration in prison and that their constitutional rights will be violated if the application is not granted. Further, that their appeal has high chances of success.

I note that the applicant's intended appeal is a first appeal from the judgment of this court. At the trial for murder, they were represented by an advocate at the State's expense. They were acquitted of the offence of murder for want of malice aforethought and convicted of the offence of manslaughter which is a lesser charge. Their appeal is therefore on points of law as well as facts. In my view, the applicants should be given an opportunity to challenge the decision of this court. Their application was filed on 30/1/2018 which was not too long after the judgment of Hon. Makau J. The delay is therefore not inordinate. However, there is no sufficient ground advanced to show that the Applicants are total paupers and that therefore they cannot afford to raise court fees or any part thereof for preparation of their appeal to the Court of Appeal.

Accordingly, I grant the applicants' leave to appeal out of time. The Notice of Appeal dated 30/1/2018 is hereby deemed to be duly filed and served upon the Prosecution Counsel, Siaya.

The applicants shall be responsible for the preparation of their record of appeals. They shall be required to pay into court a sum of Kshs. 10,000/= each for the preparation of the record of Appeal.

Dated, Signed and Delivered at SIAYA this 31ST DAY OF JULY 2018.

R.E. ABURILI

JUDGE