

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CR. APPL. NO. 53 OF 2018

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

MESHACK ODUOL ALARA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON APPLICATION

The Applicant, **Meshack Oduol Alara** faced the charge of murder contrary to **Section 203 as read with Section 204 of the Penal Code** in that on 28th day of August 2016 at Nguge Sub-location, Gem Sub-County within Siaya County, murdered Meshack Opicha Wagunda.

He pleaded not guilty to the charge and was tried before Hon. Makau J and found guilty of the charge of murder and sentenced to death on 2nd February 2018.

On 3rd July 2018, he lodged a Notice of Appeal 5 months after the conviction and sentence. He now seeks by his application and affidavit sworn on 16th March 2018 leave to file an appeal out of time as a poor person under **Rule 113(2) (5) of the Court of Appeal Rules**, claiming he is poor by virtue of his imprisonment among other grounds.

This court observes that the intended appeal is a first appeal which accommodates grounds on both questions of law and fact.

Albeit I do not find imprisonment not being a reason why one would be poor, I find that this is a suitable case where the court can exercise its discretion to accord the convict an opportunity to challenge death sentence meted out on him as it is not a mandatory sentence.

Accordingly, I allow the application and direct that the Notice of Appeal be deemed to be duly filed and served in time. However, the Applicant/ Appellant shall pay into Court Kshs. 15,000/= for preparation of record of Appeal.

Dated, Signed and Delivered at SIAYA this 31ST day of July 2018.

R.E. ABURILI

JUDGE