



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. 70 OF 2018**

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

**ERICK OTIENO OMONDI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal against the sentence dated 13.12.2016 in Criminal Case No. 350 of 2016 in UKWALA Law Court before Hon. G.Adhiambo - SRM)*

**RULING**

On 27<sup>th</sup> August 2018, this court delivered a judgment in Siaya HC Cr. A. No. 183 of 2016 Erick Otieno Omondi Vs Republic wherein the Appellant Eric Omondi Otieno had challenged his conviction and sentence imposed on him by Hon. H. Adhiambo, SRM Ukwala in Ukwala SRM Cr. Case No. 350/2016 on 13/12/2016.

In the said criminal case, the appellant had been jointly with Byron Omondi Otieno been charged with the offence of Robbery with violence contrary to **Section 296(2) of the Penal Code**. They were found guilty and were sentenced to serve life imprisonment.

On appeal, the court upheld their conviction but reduced the sentence from life to 20 years imprisonment, taking into account the period the appellant had been in prison, since they were arraigned in court.

The appellant Eric Otieno Omondi now wants to file a second appeal to the Court of Appeal. He had applied under **Rule 113(1)(A) and (B) of the Court of Appeal Rules 2010**. He seeks for leave to appeal out of time as a poor person under **Rule 112(2) and (5) of the Court of Appeal Rules**.

He urges the Court to waive for him court filing fees as he is incarcerated and that his constitutional rights of appeal will be delved if the application is not granted.

I have considered the application which is supported by an affidavit sworn by the appellant / applicant.

I note that the judgment in the appeal was delivered in open court on 27/8/2018 and duly typed.

The appellant was in court and therefore whether he had copies of the same or nor, he should have filed Notice of Appeal within the 7 days stipulated and ask for proceedings and judgment. He did not. It is nearly 2 months since the said judgment was delivered.

There are no reasons advanced for the delay in filing notice of appeal.

In addition, being incarcerated through legal and judicial process does not render one to be poor. No material have been placed before the court to demonstrate poverty of the appellant to warrant waiver of any court fees.

Further, the intended second appeal can only be based on points of law. No draft memorandum setting out the points of law to be canvassed on appeal is annexed.

Accordingly, I find the application not merited. They are dismissed. The applicant/appellant to serve the reduced sentence.

Orders accordingly.

*Dated, Signed and Delivered at SIAYA this 18<sup>th</sup> Day of October 2018.*

**R.E. ABURILI**

**JUDGE**