



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CRIMINAL MISC. APPLICATION NO. 9 OF 2017**

**JAMES NYAGA NJUE.....APPLICANT**

***VERSUS***

**REPUBLIC.....RESPONDENT**

**RULING**

1. This is ruling of an application dated 8/06/2017 seeking for extension of time to appeal against the Judgment of the Embu High Court in HCRA No. 101 of 2004.
2. The grounds supporting the application are that the applicant had planned to lodge the appeal within the stipulated 14 days to the Court of Appeal. However, his family who had promised to hire for him a lawyer failed to raise the funds required and only informed him of the inability recently. He further deposes that his appeal has high chances of success.
3. The respondent opposed the application relying on the affidavit of Beatrice Manyal the prosecution counsel in the office of the Director of Public Prosecutions. It was stated that the time allowed for lodging an appeal in a criminal case is 14 days. The applicant was convicted of the offence robbery with violence contrary to Section 296 (2) of the Penal Code by Embu Senior Principal Magistrate and the judgment was upheld by a two judge bench on 8/08/2006.
4. The applicant has not given any plausible explanation why he failed to file the appeal on time. The delay of more than 10 years is inordinate rendering this application unmerited. The applicant has not told the court whether he took any steps toward filing of the appeal. Although the applicant argues that his appeal has high chances of success, he has no evidence to support his argument.
5. The background of this application is that the applicant approached the Court of Appeal and was referred to this court for hearing and determination of this application. The record shows that he was convicted of the offence of robbery with violence contrary to Section 269(2) of the Penal Code by Embu Senior Principal Magistrate on 23/08/2004 whereas he was sentenced to death. His appeal to the High Court No. 101 of 2004 was heard and determined by a two judge bench of H.M. Okwengu, J. and J.N. Khaminwa, J. who upheld the judgment of the lower court on 8/08/2006. It is against this judgment that the applicant seeks to appeal.
6. The applicant states that his family who had promised to hire a lawyer for him for purposes of filing the appeal only informed recently that they had failed to raise the legal fees. He did not disclose when he received this information. Neither did he explain why it took him 10 years to approach the court for extension of time. Time is of essence in an application of this nature.

7. The applicant is duty bound to explain the delay in filing his appeal which he has failed to do. The length of the delay is material in this application and it is my considered opinion that the delay of 10 years is inordinate.

8. Under Section 349 of the Criminal Procedure Code provides that a criminal appeal should be filed within 14 days. The intention of the legislature in giving 14 days was to have appeal filed soon after judgment. The provision is consistent with expeditious disposal of cases and to the maxim that litigation must come to an end.

9. It would be contrary to common sense to overburden the director of public prosecution with appeals against judgments delivered more than a decade ago. Any court allowing such applications would be defeating the overriding objective which calls for active case management, expeditious, just, fair and cost effective disposal of cases. The court must have regard to economic use of resources in determining this application. The orders sought are not in conformity with the principles of the overriding objective.

10. The applicant argued that his appeal has high chances of success. I have looked at the judgment of the High Court which upheld the conviction and sentence. I am of the considered opinion that the court adequately evaluated the evidence and came to the conclusion that it was overwhelming against the applicant. His defence was referred to as a mere denial leading to the conclusion that the applicants appeal has no chances of success.

11. It is my considered opinion that the applicant has failed to satisfy the court of the cardinal requirements of this application that the delay was not inordinate and that his appeal has any chances of success.

12. I find that this application has no merit and it is hereby dismissed.

**DATED, DELIVERED AND SIGNED THIS 21ST DAY OF NOVEMBER, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Nandwa for respondent**