



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CRIMINAL REVISION NO. 27 OF 2016

CONSOLIDATED WITH MISC. CR. REV. 28 OF 2016

JAMES MURIITHI MARETE.....1ST APPLICANT

JAMLICK NJERU IRERI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. On 9/09/2016 the applicant James Muriithi Marete filed a separate application to appeal out of time in Embu HCCR. NO 76 of 2002. The second applicant in Misc. Application No. 28 of 2016 Jamleck Njeru Ileri filed a similar application on 17/11/2016 in respect of the same High court Criminal case.
2. In his supporting affidavit the first applicant depones that he had filed a similar application in Nyeri Court of Appeal Misc. Cr. Application No. 6 of 2016 and that the presiding judge directed him to file the application for leave in this court.
3. The 2nd applicant states that he requires leave to appeal out of time in respect of the dismissal of his appeal in HCCR. No. 77 of 2002.
4. The two applicants opted to argue the application by way of written submissions.
5. The applicants submissions are identical for the grounds relied on are similar and framed in a similar manner. It is contended that after dismissal of their appeals, each of them prepared the petition of appeal and handed it over to the Prison Administrative Office before being transferred to Naivasha Maximum Prison.
6. The applicants claim to have written several reminders with the Court of Appeal Nyeri without any response. It is further argued that the appeals have high chances of success. Relying on Article 50(2)(9) the applicants urge the court to allow their application.
7. The respondent in their submissions opposed the application. Ms. Nandwa submitted that the judgment of the High Court in HCCRA No. 76 of 2002 was delivered 14 years ago and that the inordinate delay has not been explained. The applicants have not annexed any documents to support their application. The State Counsel urged the court to dismiss the applications.
8. The facts leading to this application are that the applicants with two others not before the court were convicted by Embu Senior Resident Magistrate of three counts of robbery with violence contrary to

Sections 296(2) of the Penal Code and sentenced to suffer the mandatory death penalty.

9. The applicants appealed against the conviction and sentence in High Court Criminal Appeals Nos. 74, 75 76 and 77 all of 2002 which were consolidated. A two judge bench of Okwengu J. (as she then was) and Khaminwa J. dismissed the appeal for lack of merit.

10. Section 349 of the Criminal Procedure Code provides that an appeal in a criminal case shall be filed within 14 days. The proviso to the section reads:-

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.

11. The proviso emphasis on the appeal being filed within a reasonable time in the event that it is not filed within 14 days. For the court to determine what is reasonable time, the period in excess of the stipulated time and the reasons for delay must be interrogated.

12. The reasons given by the applicants are that they sent their appeal petitions to the prison administrative office but got no response. They were then moved to another prison from where they sent several reminders and again got no response.

13. The applicants ought to have annexed copies of the petitions and the reminders sent to the Court of Appeal. In the absence of any supporting documents, the applicants have an uphill task of convincing this court that any attempt to file an appeal was ever made.

14. Even assuming that the petitions were misplaced in the Prison's administrative office, the applicants ought to have followed up with the prison where they were transferred or lodge new petitions within a reasonable time.

15. As for the time taken to bring this application, it is a whole 14 years since the High Court dismissed the appeal against the judgment of the trial court in Chief Magistrate Criminal Case No. 1402 of 2000. This is inordinate delay which must be explained to the court. There was no attempt made by the applicants to give any explanation.

16. The application by the 1st applicant in the Nyeri Court of Appeal was only made this year and was given No. 6 of 2016. The Nyeri Court of Appeal did not delay the 1st applicant for it advised him to file his application in the High Court which dismissed his appeal.

17. The intention of Legislature in Section 349 was to put a limit to the time one can challenge the judgment of the court. It was informed by the fact that the affected person should be in a position to make up his/her mind whether to appeal or not immediately after judgment has been passed.

18. The preparation of the appeal may take a bit of time and perhaps the appeal is not filed within 14 days as anticipated. The proviso to the section was designed to take care of reasonable delay.

19. In the application before me, I find 14 years not to fall within what would be regard as reasonable time. The period is unreasonable and it leads to a conclusion that the decision to appeal is an afterthought on part of the appellants and may be intended to achieve an objective that this court does not comprehend.

20. The maxim that "justice delayed is justice denied" applies both ways. It will not serve the interests of justice to grant leave to appeal against a decision made 14 years ago and to expect the prosecution to prepare for the appeal as required. I am convinced that no prejudice will be caused to the applicants in the event that this application is disallowed.

21. I find no merit in this application and I dismiss it accordingly.

DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF NOVEMBER, 2016.

F. MUCHEMI

JUDGE

In the presence of:-

Both Applicants

Ms. Nandwa for the Respondent