

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISCELLANEOUS CASE NO.136 OF 2013

JOSEPH MUTUKU MUTISYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By way of Notice of Motion filed on the 12th August, 2012 **Joseph Mutuku Mutisya** seeks leave to appeal out of time.
2. The application is supported by an affidavit deposed by the Applicant where he deposes that his relatives had promised to retain a lawyer to represent him but due to financial constraints they were unable. He was of the view that his appeal has a high chance of succeeding.
3. In support of the application was an attachment- grounds of the intended appeal where he states *inter-alia* that the learned Appellate Judges erred in law by failure to discharge their duty of evaluating of evidence adduced and failing to find that the case was not proved to the required standard.
4. At the hearing the applicant added that he was not able to make the application on time because there was a delay in being supplied with the copy of the judgment.
5. In a response thereto, learned State Counsel, **Mr. Mwangi** opposed the application. He argued that no point of law had been raised by the applicant; the High Court, a court of record had evaluated evidence and upheld the conviction of the Lower Court. Further, he submitted that although an appeal being heard by a Court of Appeal is a constitutional right, this particular case had no chance of succeeding
6. A person aggrieved by a decision of the court has a right of appeal. Where the appeal is not made within stipulated time, leave to appeal can be granted following a good cause. Today, the constitution of Kenya gives convicts the right to appeal or even apply for review to a High Court Vide **Article 50(2) (9)** of the **Constitution**.
7. In the premises it will be unconstitutional to bar the applicant from appealing to the Higher Court when circumstances that made him not appeal within the stipulated time were not favourable to him.
8. Consequently, I grant him leave to appeal out of time as prayed within **14 days**.
9. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 28TH day of JANUARY, 2015.

L.N. MUTENDE

JUDGE