

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
MISC. CRIMINAL APPLICATION NO. 23 OF 2005

(From the conviction and sentence imposed by S.O. ATONGA, SRM MIGORI in the original SRM criminal case No.831 of 2003)

KEFA OMOLLO OGUOLA APPELLANT
VERSUS
REPUBLIC RESPONDENT

RULING:

The applicant seeks to be granted leave to appeal out of time. He was convicted and sentenced to death on 24th September 2004. He should have filed his appeal within 14 days but he did not do so.

Mr. Bana told court that he received instructions to file appeal soon after the conviction. On 26th September 2004 he wrote to the trial court requesting for certified copies of proceedings and judgment. He made several trips to Migori court registry but was told the proceedings were not ready.

Later the court file got misplaced after the magistrate certified the proceedings.

The learned state counsel opposed the application and submitted that the delay in bringing this application is inordinate. Copies of the judgment show that the proceedings were certified on 26/10/04. Since then over six months have elapsed.

I have thoroughly evaluated the application. Indeed over six months have gone by since the conviction and this would ordinarily be inordinate. However counsel has explained the hiccups he got in trying to get the proceedings.

True there is no affidavit from the court registry about the file getting lost but the advocate has stated on oath that he tried to get it severally in vain. He had paid deposit for typing on 1/10/04 which shows he was serious about getting the proceedings.

The applicant was sentenced to death. I feel that in the interest of justice he should be allowed to exploit all legal avenues in the light of the seriousness of the sentence.

In the circumstances I allow the application. Applicant given leave to file his appeal within 14 days from today's dates.

Dated 17th May 2005.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Chirchir for State

Mr. Kaburi H/B for Bana for applicant