



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL APPEAL 14 OF 2019

(CORAM: F.M. GIKONYO J.)

(From the re-sentence by Hon. W. JUMA CM in Narok CMCCRC Case No. 1138 of 2013 on 1st March 2019)

MORE OLE SARITE.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Leave to appeal out of time

[1] Before me is undated Chamber Summons filed on 30th November 2020 seeking leave to appeal out of time. The intended appeal emanates from the resenting decision of Hon. W. Juma in Narok chief Magistrate’s Court. Cr. Case No. 1138 of 2013 delivered on the 1st March 2019 in which the Applicant was resented to 20 years’ imprisonment for the offence of Robbery with violence contrary to Section 295 as read with Section 296 (2) of the Penal Code.

[2] In an Affidavit annexed to the application, the applicant deposed that the sentence imposed on him is harsh, excessive and uncalled for considering the circumstance of the offence and its commission. He further averred that the trial magistrate erred in ordering that the sentence of the 20 years’ imprisonment to start on 1/3/2019 and failed to take into consideration the time spent in prison as he has been in prison since 2/9/2013. According to him, this was a violation of Section 333 of the Criminal Procedure Code. That the learned trial magistrate erred by not considering that the Appellant was a first offender and he was at the prime of his age where the society need him most for the nation building. That he was a father of five school going children and a sole breadwinner to his family and extended family.

[3] Counsel for the Respondent, Ms Koina, opposed the application for leave to file appeal out of time on the ground that *Narok Criminal Appeal No. 98 of 2017* was heard and dismissed and therefore the only remedy left for the Appellant is to move to the Court of Appeal for resentencing.

ANALYSIS AND DETERMINATION

The threshold for extension of time

[4] I do note that the appellant argued substantive issues of the appeal, yet, his application is for enlargement of time to file appeal. That notwithstanding, court’s power to extend time for filing appeal is provided for under Section 349 of the Criminal Procedure Code as follows:

‘An appeal shall be entered within fourteen days of the date of the order or sentence appealed against:

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.’

[5] But, the bigger question is whether this application lies? The record provides the answer to the question.

[6] On 4/8/2017, the trial court in **NAROK CMCR NO. 1138 OF 2013** sentenced the applicant to suffer death for robbery with violence as was provided by law at the time. Being dissatisfied with decision of the learned magistrate, the Applicant appealed to the High Court vide **NAROK HCCRA NO 98 OF 2017**; the appeal was heard and a judgment delivered by Bwonwonga J on 17/1/2019 in which the death sentence imposed was quashed and the matter was remitted back to the trial court to assess the appropriate sentence in light of the guidelines set out by the Supreme Court decision in **Muruatetu**. Hon. W. Juma (C.M) in accordance with the said supreme court decisional law in Muruatetu resented the accused to 20 years' imprisonment on 1/3/2019.

[7] The record of court indicates that the Applicant was convicted on 4/8/2017. His appeal against the conviction and original sentence was heard and resentence was ordered. Resentence was done on 1/3/2019 by CM. The applicant herein filed his mitigation of appeal on 4/3/2019 and the appeal was admitted on 21/05/2020 by Bwonwong'a J. The applicant also filed an application seeking leave to appeal out of time on 30/11/2020.

[8] The time allowed for filing of appeal is 14 days from the decision appealed against. See Section 349 of the CPC. Resentence which was done on 1.3.2019 is the substratum of the appeal filed on 4.3.2019- barely 3 days of the resentence. Accordingly, the appeal he filed on 4.3.2019 was within time and is competent; it was even duly admitted for hearing by court under the law.

[9] In light thereof, the application for leave to appeal out of time is absolutely unnecessary. It seems that the applicant only injected confusion in this matter by filing the application for extension of time to file appeal out of time on 30th November 2020. This is a waste of judicial precious time; it is an abuse of process of the court by the applicant and which should be discouraged by courts of law.

[10] Before I close, it is notable that, in Narok High Court Criminal Appeal No. 98 of 2017, his conviction was upheld and the matter was referred to the trial court for re sentencing only. The appeal to this court is only on the legality or correctness or propriety of the sentence imposed upon resentencing.

[11] For the forgoing reasons the application for enlargement of time to file appeal is misconceived and wholly unnecessary, and is hereby dismissed.

[12] Nonetheless, to avoid delay, I direct the DR to prepare the record of appeal; serve it upon the Appellant and the respondent within 21 days. The appeal to be placed before the judge on a date to be appointed by court for directions. It is so ordered.

Dated, Signed and Delivered at Narok Through Microsoft Teams Online Application this 18th day of May, 2021

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F. M. GIKONYO

JUDGE

In the presence of:

- 1. The appellant**
- 2. Karanja for the Republic**
- 3. Mr. Kasaso CA**

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F. M. GIKONYO

JUDGE