



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISC. CRIMINAL APPLICATION NO. 20 OF 2017**

**MOSES LIVOKA ANZETSE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant through his Notice of Motion that was filed on 23<sup>rd</sup> February, 2017 has sought leave to appeal out of time in respect of his conviction and sentence of death for the offence of robbery with violence contrary to section 295 as read with section 296 (2) both of the Penal Code (Cap 63) Laws of Kenya.

2. The state through Ms. Rotich has opposed this application on the ground that the affidavit has not shown sufficient cause to be granted leave to appeal out of time.

3. An applicant under section 349 of the Criminal Procedure Code (Cap 75) Laws of Kenya is allowed to appeal within 14 days from the date of judgment or sentence. However, the court is given discretionally powers to extend the time within which an appeal may be lodged after the expiry of 14 days. In doing so, it is upon the applicant to satisfy the court that he has good cause entitled him to be granted leave to appeal out of time.

4. According to the applicant, he was told by his family that they were going to employ an advocate to file an appeal to the High Court. The family was unable to do so, because they did not have money to employ an advocate to do so. In his supporting affidavit, he has deponed to the fact that the family has not shown up as to whether they managed to get money to employ an advocate or not.

5. I find from the affidavit evidence of the applicant that he has shown good cause to be granted leave to appeal out of time within the meaning of section 349 of the Criminal Procedure Code. The inability of the applicant to file his appeal within the prescribed period was due to the inability of his family to employ an advocate, due to lack of money.

6. It is to be borne in mind that the right of appeal of a person who has been convicted of an offence has been constitutionalized in Article 50 (2) (q) of the 2010 Constitution of Kenya. The provisions of that article do not prescribe any conditions to be met before an applicant files his appeal.

7. The upshot of the foregoing is that leave is hereby granted to the applicant to file his appeal against both conviction and sentence in terms of his Notice of Motion filed in court on 23<sup>rd</sup> February, 2017.

8. The applicant has to file the appeal within fourteen (14) days.

**Ruling signed, dated and delivered in open court at Kakamega this 4<sup>th</sup> day of September, 2019.**

In the presence of the applicant and Ms. Rotich for the respondent

**J.M. BWONWONG'A**

**JUDGE**