



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL MISC. APPLICATION NO. 29 OF 2016

BENJAMIN MUGENDI KINYUA..... APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The undated application of the applicant was filed on 19/09/2014. It seeks for extension of time to appeal against the judgment of the High Court in Criminal Appeals Nos. 47 and 49 both of 2007.
2. The applicant was convicted by Chief Magistrate Embu in Cr. Case No. 429 of 2005 for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code and sentenced to death.
3. Subsequently, he appealed to the High Court in Cr. Appeal No. 47 of 2007. The appeal was consolidated with that of his co-accused Alfred Muchira appeal No. 49 of 2007 and both were heard and determined. The outcome was that the appeal was dismissed, conviction and sentence upheld in the judgment of a two judge bench of Khaminwa J. and Kasango J., on 21/11/2007.
4. It is against this judgment that the appellant/applicant seeks leave to appeal out of time. The grounds relied on in support of the application as set out in the applicant's affidavit maybe briefly stated:-
 - (a) That the applicant was in Embu GK Prison at the time of hearing and determining the appeal. After judgment, he was transferred to Kamiti Prison and later to Naivasha.
 - (b) That although he was aware that he only had 14 days within which to lodge the appeal, his family was not in a position to get him a lawyer as they had promised.
 - (c) That his appeal has high chances of success.
5. As the applicant argued his application, he introduced a new ground that he was frustrated in prison as he drafted petitions of appeal about 30 times and handed them over to Prison Administrative Office who did not respond. Later, the applicant says he drafted Application No. 18 of 2016 and filed it in Court of Appeal in Nyeri. He was then referred to this court where he filed the current application.
6. The first ground in the affidavit is that the family of the applicant could not afford a lawyer. The experience in the High Court is that most of the criminal appeals are filed by the appellants in person and even heard as such. In my considered view, this is not a sufficient reason to explain the overstretched delay.
7. The transfer of the applicant from Embu GK Prison to Kamiti and Naivasha does not justify the delay

in filing an appeal. Prisoners in most prisons are drawn from many areas and they are still accorded facilities by the prison administration to file appeals.

8. The other reason given is that the appeal has high chances of success. I have perused the judgment of the two judge bench. I do not want to pre-empt an appeal that may be filed by the applicant through leave granted by a higher court on appeal against the ruling of this court. However, the judgment does not conform with the arguments of the applicant.

9. In determining an application of this nature, the court must consider the length of delay. The High Court appeal was determined on 21/11/2007. This is ten years down the line. The grounds presented by the applicant have not explained the undue delay.

10. A criminal appeal should be filed within 14 days as stipulated by Section 349 of the Criminal Procedure Code. The intention of the legislature in giving 14 days was to have appeals filed soon after the judgment. It gives effect to expeditious disposal of cases and to the maxim that litigation must come to an end.

11. The Director of Public Prosecution is funded by the tax payer and would be over-burdened with late appeals of 10 years and above if the court was to allow applications of this nature.

12. The court would be defeating the overriding objective which calls for active case management, expeditious, just, fair and cost effective disposal of cases. The court must have regard to economic use of resources in determining this application. The orders sought are not in conformity with such economy.

13. I find that this application has no merit and I dismiss it with no order as to costs.

DATED, DELIVERED AND SIGNED THIS 1ST DAY OF FEBRUARY, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Nandwa for State

Applicant present