



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(Coram: Gicheru, J.A. (IN CHAMBERS))**

**CRIMINAL APPLICATION NO. NAI. 2 OF 1997**

**BETWEEN**

**FREDRICK MUVANDI KIOKO.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDE NT**

**(Application for extension of time to file Notice of  
Appeal in an intended appeal from the judgment of the High  
Court of  
Kenya at Machakos (Mwera, J.) dated 9th February, 1996.  
in  
H.C.CR. APPEAL NO. 123 OF 1991)**

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**RULING**

In this application, the applicant seeks extension of time to lodge the Notice of Appeal against the decision of the superior court in Machakos H.C. Cr. A. NO. 123 of 1995. That decision was a summary rejection of the applicant's appeal to that court under section 352(2) of the Criminal Procedure Code and was made on 9th February, 1996. According to the applicant, the said decision was communicated to him by means of a letter which reached him on 13th May, 1996. His present application was made on 28th January, 1997 - a period of over eight months since the decision of the superior court was communicated to him. No explanation has been given for this long delay to enable me exercise my discretion under rule 4 of the Rules of this Court in his favour or otherwise.

The applicant, a watchman at Enzai Youth Polytechnic in Makueni district of the Eastern Province had been convicted of stealing by servant contrary to section 281 of the Penal Code on 3rd March, 1995 by Kilungu District Magistrate's Court and was placed on probation for two years on the 21st of the same month. Hence when the decision of the superior court summarily rejecting his appeal against his conviction by the trial court was communicated to him, he was not under incarceration and his unexplained delay in making his present application is inexcusable. Having had a glance at the judgment of the Kilungu District Magistrate's Court, it appears to me that the circumstances of the applicant's application for extension of time within which to lodge the Notice of Appeal as is mentioned at the beginning of this ruling are such that they disincline me from exercising my discretion under rule 4 referred to above. In the result, I reject the applicant's application and order that the same be and is hereby dismissed.

**Dated and delivered at Nairobi this 26th day of February, 1997.**

**J.E. GICHERU**

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**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**