



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**

**AT KISUMU**

**(CORAM: GACHUHI )**

**CRIMINAL APPEAL NO 30 OF 1987**

**WILSON OMOLO NDENGA .....APPELLANT**

**V**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

June 9, 1987, Gachuhi JA delivered the following Judgment.

This is an application by way of Notice of Motion for leave to file an appeal to this court out of time.

The applicant was charged and convicted before the resident magistrate Kisumu and sentenced to 3 years on count one and eighteen months on each counts two and three. One appeal to the High Court of appeal only one count was allowed but appeal on the other two counts were dismissed on July 24, 1986.

During the hearing of appeal, the applicant was represented. He must have been notified of the result of his appeal either by his advocate or his wife. He states that his lawyer did not lodge notice of appeal on time due to other commitments. He also states that his wife was sick and could not contact him to inform him of the outcome of the appeal. He now applies for leave to file an appeal out of time and without having to pay court fees.

Before one can file an appeal, one has to file a notice of appeal within 14 days form the date of the judgment. The applicant has not filed a notice of appeal. He states that he wrote to court regarding an appeal to this court.

The file that has been shown to me does not contain such a communication. If he had filed one, it could have probably been the notice of appeal. In the absence of it the applicant must file one as provided by Rule 74 of the Court of Appeal Rules. Since the judgment was delivered in July, 1986, the applicant can only file notice of appeal with the leave of the court extending such time to enable him to do so. The present motion is only for filling the appeal out of time.

The principal state counsel does not oppose this application since the applicant is in prison and that he is incapacitated to do certain matters. It is for this reason that I think this applicant will lodge a notice of appeal within 14 days from the date of this ruling. The applicant has applied in his motion that he be allowed to file the appeal without the payment of fees. He has not stated why he cannot pay the fees nor has he obtained a certificate that he is incapable of paying the necessary fees. For this reason, fees cannot be waived.

**June 9, 1987**

**GACHUHI JA**