



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: E. M. GITHINJI, JA. (IN CHAMBERS))

CRIMINAL APPLICATION NO. 6 OF 2018

BETWEEN

**DISMAS SIKUKU FWAMBA ALIAS PAUL .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONSENT**

*(Being an application to file appeal out of time from the High Court of Kenya at Bungoma*

in

**HIGH COURT CR. CASE NO. 27 OF 2005)**

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**RULING**

This is an application for extension of time within which to file a Notice of Appeal.

Applicant depones in the supporting affidavit that after he was convicted and sentenced to suffer death for the offence of murder contrary to **section 204** of the **Penal Code**, he lodged a Notice of Appeal in time while at **Bungoma Prison** and that after he was transferred to **Kibos Maximum Prison** it has come to his knowledge that his notice of appeal cannot be traced and that his appeal has not been registered.

**Mr. Ketoo**, the learned prosecuting counsel for the respondent does not oppose the application.

Having regard to the fact that the applicant has been sentenced to death; that the averment that the applicant indeed lodged a notice of appeal in time has not been controverted, the fact that death sentence is not now mandatory and that the application is not opposed, I exercise my discretion in favour of the applicant.

Accordingly, the application is allowed. The applicant to file a notice of appeal which automatically institutes an appeal within 7 days from the date hereof.

**DATED and Delivered at Kisumu this 15<sup>th</sup> day of October, 2018.**

**E. M. GITHINJI**

.....

**JUDGE OF APPEAL**

I certify that this is a true

copy of the original.

**DEPUTY REGISTRAR**