



IN THE COURT OF APPEAL

AT KISUMU

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

CRIMINAL APPLICATION NO 15 OF 2018

BETWEEN

JOSHUA OCHIENG RAKWEL.....APPLICANT

AND

REPUBLIC.....RESPONDENT

(Being an Application from the Judgment of the High Court of Kenya at Kakamega arising from the Original Criminal Case No. 822 of 2008 at SRM's Butere Law Courts

in

KAKAMEGA H.C.CR.A. NO. 82 OF 2010)

RULING

The applicant applies for extension of time within which to file an appeal and for leave to file an appeal as a pauper. The application is supported by the applicant's affidavit sworn in support of the application. He states that he was convicted for the offence of robbery with violence contrary to **Section 296(2)** of the Penal Code and sentenced to death and that his appeal to the High Court was dismissed in November, 2010.

He further explains that he did not file appeal to this Court for the reason that he did not get a copy of judgment. The reasons he has given for delay have not been controverted by the respondent.

Although non availability of copy of judgment is not a reasonable explanation for failure to file a notice of appeal since a copy of judgment could only have assisted the applicant in drafting a memorandum of appeal after the lodging of the notice of appeal, I nevertheless allow the application in the interest of justice.

Accordingly, the application is allowed. The applicant is allowed to file the notice of appeal as a pauper within 14 days from the date hereof.

DATED and Delivered at Kisumu this 14th day of November, 2018.

E. M. GITHINJI

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JUDGE OF APPEAL

I certify that this is a true copy

of the original

DEPUTY REGISTRAR