

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

(CORAM: GITHINJI, J.A (IN CHAMBERS))

CRIMINAL APPEAL (APPLICATION) NO. 456 OF 2007

BETWEEN

ODHIAMBO

1. KENNETH OTIENO

2. GOEFFREY OMONDI OMWARE.....APPELLANTS/APPLICANTS

AND

REPUBLICRESPONDENT

(An appeal from a judgment of the High court of Kenya at Kisumu (Mwera & Warsame, JJ.) dated 24th April, 2007

in

H.C.CR.A. NO. 50 & 51 OF 2005)

R U L I N G

This is an application under Rule 4 of the Court of Appeal Rules (Rules) for orders that time for filing and serving the notice of appeal and the memorandum of appeal by the two applicants be extended and further that upon the extension of time the notices of appeal and the memorandum of appeal already filed on the dates specified be validated.

The applicants were convicted by the Principal Magistrate Kisumu of four counts of robbery with violence contrary to section 296 (2) of the Penal Code and sentenced to death. Their appeals to the superior court against conviction and sentence were dismissed on 24th April, 2007.

On 27th June, 2007 the 1st applicant lodged a notice of appeal in court. The notice of appeal was lodged over 1 ½ months after the 14 days stipulated by the rules. The 2nd applicant lodged a notice of appeal on 23rd May, 2007 about 2 weeks out of time. As a consequence Criminal Appeal No. 456 of 2007 was registered with an endorsement that it was filed out of time in accordance with the Rules.

When the appeal came for hearing on 10th June, 2009 Mr. Onyango for the appellants brought to the notice of the Court that the appeal was filed out of time. The Court agreed with him and adjourned the appeal to give Mr. Onyango sufficient time to regularize the appeal. The appeal was again listed for hearing on 29th November, 2010 but was adjourned when it transpired that the applicants' counsel had not taken steps to validate the appeal.

The present application has been made against that background.

I have considered the supporting affidavit sworn by the applicants' advocates. I have also considered all the circumstances of the pending appeal. I am satisfied that the applicants had from the time their appeals were dismissed by the superior court intended to appeal to this Court and that the delay in filing the respective notices of appeal and the memorandum of appeal was inadvertent. The delay was relatively short. It is just that the applicants be permitted to prosecute the appeal.

Mr. Gumo learned Assistant Deputy Public Prosecutor has not, quite properly in our view, opposed the application. Consequently, I allow the application. I extend the time for filing the notice of appeal by Kenneth Otieno Odhiambo 1st applicant to 27th June, 2007 when the first applicant filed the notice of appeal, and, accordingly, deem the notice of appeal filed by the 1st applicant on that date as duly filed within time. Similarly, I extend the time for filing of the notice of appeal by Geoffrey Omondi Omware the 2nd applicant to 23rd May, 2007 when the 2nd applicant filed the notice of appeal, and, accordingly deem the notice of appeal filed on that date as duly filed within time.

Lastly, I extend the time for filing the memorandum of appeal by the two applicants to 25th November, 2010 when the applicants' advocate, Mr. Charles Onyango filed a memorandum of appeal, and, accordingly, deem the memorandum of appeal filed on that date as duly filed within the time. The overall result is that criminal appeal No. 456 of 2007 is deemed as duly filed within time and therefore competent. No order as to costs.

Dated and delivered at Kisumu this 2nd day of December, 2010.

E.M.

GITHINJI

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR