



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU
CRIMINAL APP 8 OF 2006
JOSEPH MWANGI MURIGI APPLICANT

AND

REPUBLIC RESPONDENT

(Application for extension of time to file and serve a notice of appeal out of time from a judgment of the High Court of Kenya at Nakuru (Mr. Justice Musinga) dated 21st October, 2005

in

H.C.C.R.A. NO. 380 OF 2003)

RULING

The applicant seeks two orders under **Rule 4** of the Court of Appeal Rules viz; that time within which to lodge an appeal be extended and that the notice of appeal already filed be deemed to be timeously filed. The application is supported by the affidavit of Githui John, learned counsel for the applicant.

The applicant intends to file an appeal against the order of the superior court (Musinga, J.) dated 21st

October 2005 summarily rejecting the applicant's *Criminal Appeal No.380* of 2003 under **section 352(2)** of the Criminal Procedure Code.

The rejected appeal was against conviction and sentence in *Nakuru Chief Magistrate's Criminal Case No. 2351 of 2001* whereby the applicant was convicted for the offence of robbery with violence contrary to **section 296(2) Penal Code** and sentenced to death on 30th July 2003. It appears that the appeal by applicant's co-accused **ISAAC MWANGI WANJIKU** was similarly summarily rejected by the superior court. The applicant's co-accused filed *Criminal Application No. Nai.2 of 2005* in the Court for the extension of time for lodging the Notice of Appeal which application was allowed by this Court (Omolo, J.A.) on 26th September, 2005.

The present application was filed on 7th October, 2006 nearly one year after the applicant's appeal was summarily rejected.

The applicant has explained that the delay was due to lack of proper legal counsel.

I have considered all the circumstances of the case.

The applicant has been convicted of a capital offence. It is just that since the applicant has been sentenced to death he should be allowed to appeal to this Court more so when the Republic is not opposing the application and when also the applicant's co-accused has been allowed to appeal out of time from a similar order of the superior court.

In the circumstances, I allow the application. I extend the time for lodging the Notice of Appeal. The Notice of Appeal lodged on 17th February, 2006 is deemed as filed within time.

Dated and delivered at Nakuru this 26th day of February, 2007.

E.M. GITHINJI

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR _____