



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA  
AT NAIROBI

Criminal Appli 1 of 2006

**SIMON MWANGI KIRIKA ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**(An application for extension of time to file and serve Notice and Memorandum of Appeal out of time in an intended Appeal from the judgment of the High Court of Kenya at Nairobi (Msagha, J) dated 18<sup>th</sup> June, 2002**

**in**

**H.C. Cr. A. No. 1312 of 1998)**

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**R U L I N G**

The applicant in this application, Simon Mwangi Kirika, was charged with six counts in the subordinate court. He was convicted of all the counts and sentenced to serve three years imprisonment on the first two counts. He was sentenced to a fine of Kshs.2,000/= in default 3 months imprisonment on each of the other four counts. The imprisonment terms in respect of the first two counts were to run concurrently. He was later put on bail pending appeal as he appealed to the High Court against conviction and sentence. The appeal came up on the 18<sup>th</sup> June, 2002 and as the appellant did not appear before the court, Msagha, J dismissed the appeal stating:

***“Appeal dismissed for want of prosecution”.***

Later the appellant was traced and arrested. He was taken before Makhandia, J who ordered him to serve the remaining part of the sentence. He applied for setting aside of the order of Msagha, J. and reinstatement of the appeal in the High Court, but, the learned Judge (Makhandia, J) rightly rejected the same as there is no provision in the Criminal Procedure Code to the same. He has now come before this Court to have leave to file an appeal against the High Court decision dismissing his appeal extended.

The learned Senior State Counsel, Mr. Kaigai, does not oppose the application and in my mind rightly so.

The applicant says through his advocate that he was not aware of the hearing date of 18<sup>th</sup> June, 2002 when his appeal was dismissed for want of prosecution. There is no evidence that he was served with any

hearing notice for that date. That being the case, although the time which has lapsed since then is clearly inordinate, one cannot blame him for the delay to file appeal in time against the superior court's decision as there is no evidence that he was aware that the appeal had been decided till he was arrested and taken to court before Makhandia, J to start serving the sentence. In any case, in my mind, I think the intended appeal is not frivolous. It may have merits, although that is not mine to find at this stage. As the State also does not oppose, this application is allowed. The applicant has **fourteen (14)** days from the date hereof to lodge Notice of Appeal and Memorandum of Appeal in this matter. Orders accordingly.

**Dated and delivered at Nairobi this 31<sup>st</sup> day of January, 2006.**

**J. W. ONYANGO OTIENO**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**