



REPUBLIC OF KENYA

IN THE KENYA COURT OF APPEAL AT KISUMU

FROM ORIGINAL CONVICTION AT MIGORI HIGH COURT IN HCCRC NO. 10/2014

CRIMINAL APPLICATION NO 29 OF 2020

BETWEEN

ENOCK OKOTH KOI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An application for extension of time to file notice of appeal and file appeal out of time in an intended appeal against a judgment of the High Court of Kenya at Migori (Majanja, J) dated 26th October, 2016)

RULING

ENOCK OKOTH KOI (the applicant) was convicted on 26/10/2016 in HCCRC No. 10 of 2014, for the offence of murder, and sentenced to Death. However, he but he did not apply for the record or file a notice of appeal within the stipulated time provided for

by section 349 of the criminal procedure code i.e. within Fourteen (14) Days from the date of conviction. He has by a notice of motion dated 3rd October 2017 sought that the time to lodge the appeal be extended and/or the notice of appeal filed out of time be deemed as properly filed with leave of the court. He was charged. He explains that the delay in filing the notice of appeal was occasioned by heavy financial constraints and a promise by family to hire an advocate to pursue his appeal, but this never materialized. His attempts to reach his family have failed, and he states that the omission was not intentional.

The respondent concedes the application saying no prejudice will be occasioned.

The extension of time is provided for under rule 4 of the Court of Appeal Rules which provides inter alia:

The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended

In considering an application for extension the court must be alive to several key issues in exercise of its discretion namely:

- Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
- A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- Whether there will be any prejudice suffered by the respondents if the extension is granted;
- Whether the application has been brought without undue delay

Ideally the applicant ought to have filed his appeal by November 2016, and I take note that upon realizing that there was delay in filing, he acted within a year and filed this application in October 2017. Given his circumstances, including the constraints he has alluded to, and the fact that the respondent confirms it will not suffer any prejudice if the time for filing and serving the notice of appeal is extended. In my considered view one year's delay is not inordinate.

Consequently, I allow the application dated 3rd October 2017 with the result that the notice of appeal be and is deemed as having been duly lodged and served. The costs of the application shall be in the appeal.

DELIVERED AND DATED THIS 23RD DAY OF JULY 2021 AT NAIROBI

H.A. OMONDI

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR



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