

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

MISC. CRIMINAL APP. NO. 27 OF 2018

REPUBLIC.....APPLICANT

=VRS=

ELKANA OMBAIRE.....RESPONDENT

(An application from the Original Judgement of Hon. P. W. Wasike – RM

in Keroka Criminal Case No. 439 of 2015)

RULING

The application dated 26th July 2018 for leave to appeal out of time has been considered. Section 348 A (1) of the Criminal Procedure Code provides for the prosecution’s right of appeal against an acquittal, order of the refusal or order of dismissal. The Section states: -

“348 A. (1) When an accused person has been acquitted on a trial held by a Subordinate court or High Court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a Subordinate court or High court, the Director of Public Prosecutions may appeal to the High Court or the Court of Appeal as the case may be, from the acquittal or order on a matter of fact and law.”

Section 349 of the Criminal Procedure Code requires that such an appeal to be filed within 14 days of the order or sentence appealed against. However, the proviso thereto gives power to the court to which the appeal is made to extend that period for good cause. This court if satisfied that there is good cause to extend the period for filing the appeal and accordingly the application is allowed. The appeal shall be filed and served within fourteen days of this order.

Signed, dated and delivered in open Court this 20th day of December 2018.

E. N. MAINA

JUDGE