



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAJIADO**

**CRIMINAL APPEAL NO. 14 OF 2016**

**PETER MUASYA MBAKU.....APPLICANT**

**Versus**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant was tried by the Chief Magistrate's Court Kajiado for the offence of attempted defilement contrary to section 9 (1) of the Sexual Offences Act. The trial magistrate convicted the applicant and sentenced him to ten (10) years imprisonment.

The applicant being dissatisfied with the decision of the trial court intends to challenge both conviction and sentence as deemed from the draft memorandum of appeal. In the chamber summons filed before this court and attached supporting affidavit he was not able to file the appeal within the stipulated period of fourteen (14) days as provided for under Section 349 of the Criminal Procedure Code. In the application he seeks an order of this court to file the appeal out of time.

I have considered the application together with affidavit. The application is not opposed. The applicant has indicated that the intended appeal has high chances of success. The reasons for the delay have been explained and this court finds it plausible to persuade this court exercise discretion. There would be no prejudice nor injustices occasioned to the other party if these orders are granted in favour of the appellant.

I take cognizance that the applicant has been sentenced to long term sentence which he intends to contest in the proposed appeal. I find no good reasons not to allow the application to enable applicant canvass his appeal to the High Court under Section 347 (2) an appeal to the High Court may be on a matter of fact as well as matter of law. This court also takes cognizance of the fundamental rights guaranteed in our constitution. Central to this being right to a fair trial under Article 50 of the Constitution, right to liberty of the applicant. There is no prejudice occasioned if the applicant was to be allowed to challenge the decision of the trial court.

For these reasons the following orders shall abide:

- 1. The application to file the appeal out of time allowed.**
- 2. The memorandum of appeal filed be deemed as properly filed within time.**
- 3. The Deputy Registrar do cause the proceedings of the lower court to be typed and served upon the applicant within 30 days from today's date**
- 4. Further mention on 7/9/2016 before the Deputy Registrar to monitor compliance with the**

**order.**

It is so ordered.

**Dated, delivered in open court at Kajiado on 21<sup>st</sup> day of July, 2016.**

.....

**R. NYAKUNDI**

**JUDGE**

**Representation:**

Applicant – present

Mr. Akula for Director of Public Prosecutions

Mateli Court Assistant