



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 116 OF 2013**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**FREDRICK KYALO MUTISO ..... 1<sup>ST</sup> RESPONDENT**

**ALEX KYALE MUTISO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 15<sup>th</sup> July 2013 is for leave to appeal out of time. It is premised on grounds that the applicant is aggrieved by the judgment of the Resident Magistrate; the outcome of the case was brought to the attention of the Director of Public Prosecutions after lapse of the period allowed for appeal and the appeal has overwhelming chance of succeeding.
2. In a supporting affidavit, **Brenda Nyabuto** a prosecuting counsel reiterates what is stated in the grounds of appeal and states that it is in the interest of justice that the appeal be admitted so as to be heard on merit
3. **Section 349** of the **Criminal Procedure Code** provides thus:

***“An appeal shall be entered within fourteen days of the date of the order or sentence appealed against:***

***Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.”***

4. Judgment in the case was delivered on the 30<sup>th</sup> May 2013. The duration within which the applicant could have appealed lapsed on the 14<sup>th</sup> June 2013 or thereabout. There is evidence of the decision of the court having been brought to the attention of the Director of Public Prosecution’s office on the 13<sup>th</sup> June 2013. Proceedings in the matter were received by the applicant’s office on the 18<sup>th</sup> June 2013. The application herein was filed on the 15<sup>th</sup> July 2013. This was one month after the time within which an appeal was allowed. The respondents notified the Attorney General of the intention to institute a civil claim a day after the application had been file. It can therefore not be said that the notice of intention to sue given is what prompted the applicant to file the instant application.
5. It has been stated that the appeal has a high chance of succeeding. Having perused the proceedings and judgment thereof it is apparent that justice would require the appellant being heard. Consequently a good cause has been demonstrated why the appeal should be heard.
6. From the foregoing I do grant the applicant leave to appeal out of time within 14 days.
7. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 21<sup>ST</sup> day of MAY, 2014.**

**L.N. MUTENDE**

**JUDGE**