



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CRIMINAL APPLICATION NO. 19 OF 2013

REPUBLICAPPLICANT

VERSUS

**1. ISSAC RODROT1ST RESPONDENT
2. STEFFANO UCCELI2ND RESPONDENT**

RULING

This application is brought under section 349 of the Criminal Procedure Code seeking in the main leave to appeal out of time against the order of acquittal of the two Respondents dated 7th February, 2013.

The grounds are that the Director of Public Prosecutions being aggrieved by the acquittal of the two Respondents is desirous of appealing against it under section 348A of the Criminal Procedure Code.

Further that the prosecution upon reading the ruling applied for copies of the proceedings and ruling for purposes of filing an appeal.

They were supplied with the ruling on 7th February, 2013 but without the proceedings which were later supplied on 27th June, 2013.

Further that the delay to file the appeal on time was caused by delay in typing.

The application is opposed on the grounds that the delay was inexcusable and inordinate and the blame should not be assigned to the Court in that the certificate of delay clearly indicates that the request for the proceedings and ruling was made vide a letter dated 16th April, 2013 and the ruling and proceedings ending on 10th May, 2013 were supplied to the prosecution on 27th June, 2013.

Section 349 of the Criminal Procedure Code provides,

“An appeal shall be entered within 14 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 14 days has lapsed 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 appeal against, and a copy of the record within a reasonable time of applying to the Court therefor”.

I have perused the certificate of delay and noted that the request for the proceedings and ruling was made on 16th April, 2013 and they were supplied on 27th June, 2013. While there was delay on the part of the Court which was explained in the certificate the applicant is also partly to blame for lack of activity between 27th June, 2013, to 24th July, 2013. However, I do not find the delay to be unreasonable and leave is granted as prayed, the annexed draft memorandum of appeal is deemed as filed.

Ruling read and delivered in open Court this **13th** day of **August, 2013**.

In the presence of:-

Learned State Counsel Miss Ogweno

Learned Counsel for the Respondent Mr. Njuguna

Court clerk Mr. Musundi

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M. MUYA

JUDGE

13TH AUGUST, 2013

Njuguna: I am making for an application for stay pending appeal. I am also applying certified copies of the ruling.

Miss Ogweno: No objection

Court: Certified copies of the ruling to be furnished to the parties. There will be a stay but only for **ten (10)** days.

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M. MUYA.

JUDGE

13TH AUGUST, 2013