



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MALINDI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. 14 OF 2013**

**JONATHAN KAZUNGU NGOWA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**REASONS FOR THE RULING GIVEN ON 23RD AUGUST, 2013**

1. The Notice of Motion filed on 20th June, 2013 was brought under Sections 349 and 354(d) of the Criminal Procedure Code.
2. The applicant argued that the criminal proceedings in Criminal Case no. 180 of 2013 before Shikanda Ag. Senior Resident Magistrate should be stayed pending the hearing of the intended appeal from his ruling of 24th May, 2013. It was also sought that leave be granted to file such appeal out of time. The state opposed the application terming it premature and without legal premise.
3. Having considered all the arguments and material tendered before me, I was inclined to agree that neither the substantive provision on appeals, Section 347 of the Criminal procedure Code, nor the other sections cited in the Notice of Motion seem to anticipate an appeal at such an interim juncture, especially as no order of acquittal or conviction had been entered.
4. More importantly, it appeared to me upon looking at the ruling of the learned magistrate that for the sake of good order, it was best to let the Lower Court complete the trial whereupon any aggrieved party or parties can approach the High Court. Thus, I considered that it would have been premature to allow the orders sought.

Reasons read out on this **27th** day of **September, 2013** in the presence of Miss Mathangani for the State, Applicant's counsel absent.

**C. W. Meoli**

**JUDGE**