



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Miscellaneous Criminal Application 133 of 2012**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**JONATHAN KATANA KENGA GONA ..... RESPONDENT**

**RULING**

This application by way of a Notice of Motion is brought under section 348 and 349 of the Criminal Procedure Code and article 48, 5 (III) and 165 (3) of the Constitution of Kenya 2010.

This application seeks leave to appeal out of time.

The grounds are that the Respondent was wrongly acquitted by Kilifi Senior Resident Magistrate in SRMCC 546 of 2008 under section 210 of the Criminal Procedure Code and the appellant was not able to lodge his appeal within the stipulated period due to delay in obtaining copies of the proceedings.

This application is opposed on the grounds that the application is made two years after the ruling of Honorable P.M. Kiama acquitting the Respondent.

I have gone through the pleadings and the rival oral arguments before the Court and I am satisfied that the applicant had made credible efforts to obtain the proceedings of the lower Court. It would not serve the ends of Justice to shut the applicant from its appeal. Every party is entitled to its day in Court.

Leave to file appeal out of time is granted as prayed the draft petition is deemed as duly filed and served.

Ruling dated and delivered this **7th** day of **December, 2012**.

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**M. MUYA**  
**JUDGE**

**In the presence of:-**

Miss Mwaura for the State

Respondent present in person

Court clerk – Musundi