



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Criminal Miscellaneous Application 10 of 2009

1. Criminal Law

2. Miscellaneous Criminal Application for

- i) Leave to apply out of time
- ii) **Section 349** Criminal Procedure Code Cap 75
- iii) Reasons for Delay in not filing Appeal
 - a) Not being able to entertain copies of proceedings of judgment in SPMCC 1621/08 in time.
 - b) Certificate of delay
 - c) Sentence attempted defilement of minor aged six (6) years old.

Alternative incident

Assault

Ten (10) years imprisonment on main count.

3. Application not opposed by state

- iv)

4. Held application granted

- i) Appeal to be filed within fourteen (14) days of to-days date

5. Case law - Nil

6. Advocate

S.G. O’nganyi & Co. advocate instructed by the firm of M/S S.G. O’nganyi & Co. advocates
for the Applicants originally accused – present

P. Kiprop State Counsel instructed by the Attorney General for the Respondent - present

KENNETH KIPNGETICH KIRUIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Leave to appeal out of time

Application dated 21st July, 2009

I: Background

1. Facing a count of attempted defilement of a minor child contrary to **section 10 (1)(2)** of the **Sexual Offence Act** and an alternative on second count of Indecent Assault contrary to **section 11(1)** of the **sexual offence**, the applicant offender after trial was sentenced to ten(10) years imprisonment.
2. The time to appeal against this conviction and sentence was fourteen (14) days. He failed to do so and brings this present application seeking leave to appeal out of time.

II: Leave to appeal out of time 21st July 2009.

3. The applicant gave reasons for failing to appeal within the fourteen (14) days as being attributed to the Senior Principal Magistrate Criminal case No. 1621/08 proceedings having not been filed on time.
4. The applicant also took time to find an advocate to represent him on appeal.

III: Findings

5. Section 349 of the criminal procedure code, at the “provisions” Permits to this court to allow an advocate file an appeal out of time where it has been demonstrated that the delay was caused by obtaining the said proceedings.
6. This court accordingly noted that the application has annexed proceedings accompanied by a certificate of delay from the courts and a memorandum of the proposed appeal.
7. The said application is therefore granted with orders that the appeal be granted and filed within a period of fourteen (14) days from to days date.

DATED this 31st day of July, 2009 at **KERICHO**.

M.A.ANG’AWA

JUDGE

Advocate

S.G. O’nganyi & Co. advocate instructed by the firm of M/S S.G. O’nganyi & Co. advocates

for the Applicants originally accused – present

P. Kiprop State Counsel instructed by the Attorney General for the Respondent - present