



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Criminal Miscellaneous Application 11 of 2009

1. Criminal Law

2. Miscellaneous Criminal Application for

- i) Leave to appeal out of time
- ii) **Section 349** Criminal Procedure Code Cap 75
- iii) Reasons for delay in not filing appeal
 - a) To obtain copies of proceedings of judgment Senior Principal Magistrate

Case No. 1842 of 2007

- b) Certificate of delay made
- c) Sentence of Death imposed for Robbery with violence **Section 296(2)** Penal Code.

3. **Application not opposed by state.**

4. **Held- Application granted.**

- i) Fourteen (14) days to file appeal against conviction and sentence from today's 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– present

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

Applicant - present

NELSON KIPROTICH LANGAT.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Leave to appeal out of time Application date 24th July, 2009

I: Background

1. The applicant herein was charged with robbery with violence contrary to **section 296(2)** of the penal code with another not in this application. He was sentenced to “death” after being convicted on hearing of a full trial by the subordinate courts.
2. The right of appeal according to law is fourteen (14) days which has now expired.
3. The applicant filed a Miscellaneous Application before this High court seeking leave to file the appeal out of time.

II: Application 24th July, 2009

4. The advocate for the applicant stated the reasons why the appeal had not been filed and is out of time was due to the proceeding and judgment of the Senior Principal Magistrate’s court and not being typed and ready on time.
5. The proceedings have now been obtained and there is a formal certificate of delay issued by that court.
6. From the proceedings the applicant had been sentenced to “Death” with another not before court.

III: Findings

7. Under the “Provisions” of **Section 349** of the Criminal Procedure Code where the advocate of the offender is able to show that the delay in applying for proceedings caused the delay in filing an appeal the court may extend time for filing the appeal.
8. I hereby grant the application as prayed. Leave be and is hereby granted to file the appeal out of time.
9. That fourteen (14) days is granted to the applicant to file his appeal from to day’s 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– present

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

Applicant - present