



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Misc Crim Appli 86 of 2006**

**SALIM SAID MLOFA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Pursuant to the provisions of Sections 349 and 357 of the Criminal Procedure Code, the Applicant herein filed a motion seeking for leave to appeal against the conviction and sentence pronounced by B. Jaden, the learned Principal Magistrate on 24<sup>th</sup> April 2005 in Kwale Senior Resident Magistrate's Court Criminal case no. 1610 of 2005. The motion is supported by the affidavit of Justin Sammy Kaburu sworn on the 9<sup>th</sup> November 2006.

The motion is strenuously opposed by Mr. Monda, the learned state counsel who filed a replying affidavit he swore on 15<sup>th</sup> November 2006.

The thrust of the Applicant's motion is that it took time for the trial court to supply him with the certified copies of the proceedings and judgment. A certificate of delay signed by the Kwale Senior Resident Magistrate was annexed to the affidavit in support. It is the submission of Mr. Mondah that the application should not be allowed because there is no evidence that the Applicant ever applied for proceedings. It has also been argued that the period taken to lodge the application is inordinately long and inexcusable.

I have considered the arguments for and against the motion. I have further perused the application plus the affidavit in support and in opposition. The provisions of Section 349 of the Criminal Procedure Code gives this court a wide discretion to grant leave to an applicant to file an appeal out of time so long as good reason (s) is (are) given to justify the delay. I have perused the certificate of delay and it is quite clear that there was a delay by the court to supply the proceedings to the Applicant. Though the delay of 1½ years was inordinate still the same in my view is excusable in view of the fact that the court caused the delay and further due to the fact that the Applicant was unrepresented. I find that the Applicant has shown good cause for the delay.

Consequently, the Applicant is granted leave of 7 days to lodge and appeal out of time.

Dated and delivered this 24<sup>th</sup> day of November 2006.

**J. K. SERGON**

**JUDGE**