



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**Misc Criminal Appli 38 of 2003**

**(An application to appeal out of time from the  
original Butali RM Criminal Case No. 846 of 2001  
delivered on 12th September, 2003 (Mrs. R. A. Oganyo,RM))**

**REPUBLIC ..... APPLICANT**

**V E R S U S**

**1. ABSOLOM MUSTAPHER**

**2. SIMON MUKONYI CHILUYI.....RESPONDENTS**

**3. CHRISTINE NALIAKA**

**4. JESCAH NECHESA WAFULA**

**RULING**

The Republic filed a Notice of Motion on 7.10.2003 seeking leave to file appeal out of time in Butali Cr.C. No.846 of 2001 in which the lower court acquitted the four respondents in the application herein on 12-9-2003. The Lower Court record does not show any application for a copy of the judgement was made following the delivery of the judgement on 12.9.2003. The affidavit in support of the application shows that the judgement and proceedings were received from the lower court on 6-10-2003. The application does not show when they were applied for. Without the date on which the application was made, it is not easy to determine whether the delay in applying was inordinate or not unless the proximity in time between the date of judgement and the date on which it was supplied is such that it can easily be seen that the delay was minimal.

An appeal to this court from the lower court is required to be filed within 14 days of the judgement. In the instant application, the period for appealing expired on 26th September 2003. The application seeking leave was made 11 days after the expiry of the period for filing the appeal. Although the date on which the application for judgement and proceedings was not disclosed in the application, in the circumstances of this case, it can easily be seen that it must have been soon after the judgement. The lateness in filing the appeal by only 11 days cannot in my view be said to be inordinate and I am not inclined to hold that the delay was unreasonable or inordinate. However, it was necessary for the Applicant to show in the application the matter of law on which the Attorney General intends to appeal. The application did not disclose this. It merely alluded to the fact that the appeal had “*overwhelming chances of success.*” This statement alone does not disclose the point of law on which the Attorney General intended to appeal. Where as here an application for leave by the Attorney General to appeal out of time does not disclose the point of law intended to be pursued on appeal and no draft petition of appeal is annexed to the application from which it can be deciphered, the mere fact that there has not been inordinate delay in applying for leave will not alone constitute sufficient cause for the grant of leave. In the circumstances I am unable to grant the application and the same is hereby dismissed.

***Dated at Kakamega this 3rd day of June, 2005.***

**G. B. M. KARIUKI**

**J U D G E**

