

Indeed this application was middled with several defects as to form but the court has also to look at the merits. I do note that the appeal does raise a question of law in that the court was not properly constituted when the order of dismissal was made as the clerk and court prosecutor were absent. Further to the above this was a case relating to children. This case was dismissed before it was heard. This being a children's matter it is only fair that the matter be given a chance to be canvassed fully, so that the orders made should only be in the best interest of the children. Despite the inordinate delay in bringing the application the court finds that for the ends of justice to be met, it is only fair that this application be allowed.

I therefore allow the application to have the appeal filed out of time and the appellant is given 14 days within which to have the appeal record prepared and placed before the judge for admission so that a hearing date can be taken thereafter. Orders accordingly.

Dated at Machakos this 9th day of November 2004.

Read and delivered in the presence of

R. V. WENDOH

JUDGE