



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. 8 OF 2019**

**SAMSON OMAMO KODANDE.....APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING:**

1. The Application dated 13.2.2019 seeks leave of court to appeal out of time against the conviction and sentence passed on 14.6.2018 by Bondo Magistrate's Court.
2. The same is supported by grounds and supporting affidavit sworn by Samson Omamo Kodande on 13.2.2019. The Applicant claims that he received court proceedings on 18.7.2018 but fell ill and could not instruct his advocate because he also had financial challenges.
3. The State has nothing to say. Leave to appeal out of time can be granted as stipulated the proviso to **Section 349 in section of the Criminal Procedure Code** where the applicant did not get proceedings in good time and where there is a satisfactory explanation for the delay.
4. In addition, where, despite the delay, there is no prejudice occasioned to any party or the explanation given is satisfactory, the Court can grant leave.
5. There is delay in bringing the application but there is an explanation which hinges on the social issues. The applicant is said to have been sick, he sought traditional medication and that he had no money to instruct an advocate. In my humble view, despite the delay, there is an explanation and no prejudice is occasioned.
6. I grant leave to file an appeal within 14 days of today in default, the leave granted lapses. This file is closed.
7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 5<sup>TH</sup> DAY OF MARCH 2019.**

**HON. LADY JUSTICE R.E. ABURILI**

**JUDGE**