

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL MISC NO. 227 OF 2013

FRANCIS NGEI MWIKALIACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. By an Application dated **20th December, 2013** the Applicant seeks leave to appeal out of time. The application is premised on grounds that having been convicted for the offence of attempted rape and sentenced to **10 years** imprisonment in **Criminal Case No. 147 of 2011**, the applicant was ignorant of the consequences of not lodging the appeal within the required **14 days**.
2. Further, he states that he was not aware that he could not file the application seeking leave to appeal out of time. He also fell sick therefore could not act accordingly.
3. The application is not opposed by the State.
4. I have perused a copy of the draft memorandum of appeal which raises considerable issues that should be canvassed on appeal.
5. The applicant was convicted in **March, 2012**. **Two (2) years** have lapsed since he was sentenced. However considering the fact that failure to file the appeal as required was not occasioned by some inadvertence on his part, in the interest of justice he ought to be given the opportunity of being heard.
6. In the premises I grant him leave to appeal out of time within **14 days**.
7. It is so ordered.

DATED, SIGNED, and DELIVERED at MACHAKOS this 11TH day of FEBRUARY 2014.

L.N. MUTENDE

JUDGE