



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT KISUMU**  
**CORAM: CHESONI, C.J., OMOLO & LAKHA, J.J.A.**  
**CRIMINAL APPLICATION NO. NAI 4 OF 1998**  
**BETWEEN**

**PETER BUNDUKI .....APPLICANT**  
**AND**  
**REPUBLIC .....RESPONDENT**

**(Application for leave to appeal out of time in an appeal from  
a conviction and sentence of the High Court of Kenya at  
Kisii (Mbaluto J) dated 20th November, 1996  
in  
H.C.CR.C. NO. 48 OF 1996)**  
**\*\*\*\*\***  
**RULING OF THE COURT**

The applicant/appellant was convicted of manslaughter and sentenced to three years' imprisonment. He was dissatisfied with his conviction and sentence and as he wished to appeal; he instructed a firm of advocates (M/s Mainye) to prosecute the intended appeal. It appears the advocate did not take action on the instructions of the appellant. All along the appellant was under the impression that an appeal had been filed till 24th March, 1998 when he came to the Court of Appeal for the hearing of his appeal and was informed that no appeal had been filed.

On 25th March, 1998 the appellant, in person, lodged an application for leave to appeal out of time. That application was heard by Kwach, J.A. who dismissed it. The appellant has now come to us on a reference.

In the intended memorandum of appeal the appellant alleges that his guilt was not proved beyond reasonable doubt and the learned trial Judge took into account extraneous matters. The intended appeal is not based on frivolous grounds. We think the appellant should be heard on his appeal. Consequently, the single Judge's order dismissing the application is set aside. We grant the appellant leave to file the notice of appeal within fourteen (14) days from the date of this order and thereafter to file the memorandum of appeal and record of appeal within a further fourteen (14) days. If the appellant does not wish to file a fresh memorandum of appeal let the petition of appeal filed on 26th March, 1998 be accepted as filed within the extended time.

Dated and delivered at Kisumu this 16th day of March, 1999.

**Z. R. CHESONI**  
-----  
**CHIEF JUSTICE**

**R. S. C. OMOLO**  
-----  
**JUDGE OF APPEAL**

**A. A. LAKHA**  
-----  
**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**