



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GICHERU, TUNOI & PALL, J.J.A.)**

**CRIMINAL APPLICATION NO. NAI. 5 OF 1998**

**BETWEEN**

**NICHOLAS KIOKO .....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

**(Appeal from a Judgment of the High Court of Kenya at Kisii (Mr. Justice Mbaluto)  
dated 20th November, 1996**

**in**

**H.C.CR. NO. 48 OF 1996)**

**\*\*\*\*\***

**RULING OF THE COURT**

The applicant complains that the learned single judge of this court did not grant him an opportunity to pursue his application for leave to file his appeal out of time. The learned State Counsel actually confirms this and states that she, too, did not say more than a sentence as regards "delay" by the applicant in preferring his intended appeal. Though we are to fault the Judge in this regard, it seems that the record of the proceedings confirms the averment by the applicant that he was not accorded opportunity to canvass his application.

With great respect to the learned single Judge of this Court we will set aside his order of dismissal. We will grant leave to the applicant to file his appeal out of time. This he must do within 14 days hereof.

Made and delivered at Nairobi this 4th day of November, 1998.

J. E. GICHERU .....

JUDGE OF APPEAL

P. K. TUNOI .....

JUDGE OF APPEAL

G. S. PALL .....

JUDGE OF APPEAL

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

**DEPUTY REGISTRAR**