



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(Coram: Chesoni Ag JA)**

**CRIMINAL APPLICATION NO. NAI 17 OF 1984**

**KIPNG'ETICH .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Appeal from the High Court at Nairobi, O'Kubasu J)*

**RULING**

The applicant's appeal was dismissed by the High Court (O'Kubasu J) on August 3, 1984. His wife consulted him in September, when he requested her to instruct a lawyer to prefer a second appeal to this court. In her affidavit in support of this application for extension of time to file the notice of appeal, Susan Wangari Kipng'etich (his wife) says that she instructed Mr. Kositany, advocate, in September 1984. However, she later discovered that Mr. Kositany had taken no action to file and prosecute the appeal and on November 9, 1984 she instructed Odero and Orieyo Advocates, who filed this application on November 9, 1984.

Mr. Odero has submitted that the applicant should not be made to suffer for the omission of his former advocate. Miss Mbarire for the respondent chose to leave the matter to my discretion.

I am satisfied that the applicant took necessary steps to prosecute his appeal but he was let down by his former advocate. The delay is not inordinate and the matter involves the liberty of a subject. I would in the circumstances exercise my discretion in the favour of the applicant. Consequently, the application is allowed and the applicant shall file the notice of appeal within 14 (fourteen) days from the date of this order.

So I order.

**Dated and delivered at Nairobi this 10th day of December, 1984.**

**Z.R CHESONI**

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**AG.. JUDGE OF APPEAL.**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**