



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Misc. Cr. App. 11 of 2008

DAVID RUTO KIPKOECHAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

Leave to appeal out of time

Notice of Motion 4th November, 2008

1. On the 13th November, 2008 the applicant/proposed appellant filed a Notice of Motion dated 4th November, 2008 seeking for leave to appeal against the conviction and sentence on two counts brought against him.

2. The first count being

“entering a dwelling house with intent to commit a felony”

The second count being

“indecent (assault) act with a child contrary to section 11(1) of the sexual offences act No. 3 of 2006.

3. The applicant pleaded guilty to both counts and was duly sentenced.

4. The applicant prays to be permitted to appeal out of time as his constitutional rights had been violated and that the sentence was excessive.

1: Arguments by the applicant

5. Although the application was not opposed by the state, the applicant argued that a plea of guilty had been made. This though is not an absolute bar to an appeal. (*Ndede v R(1991) KLR 567*) Further, the appellant has a good success and chance in the appeal.

The state had no objection to the application and did not intend to oppose it.

III: Opinion

7. This Court is of the opinion that in principle a plea of not guilty should not be allowed on appeal under section 348 of the criminal procedure code. What is in issue is, to produce previous conviction without it being before the court" I do not have the original file to verify this.

I allow the application. That an appeal be filed within 14 days. This though will be subject to admission process of an appeal.

DATED this 16th day of December, 2008 at **Kericho**

M.A. ANG'AWA

JUDGE

Advocates

W.R. Kiprono instructed by M/S W.R. Kiprono & Co. advocates

for the Applicant

R.K. Koech state counsel instructed by the Attorney General for the state



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)