



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL APPEAL NO. 64 OF 2018**

**DIRECTOR OF PUBLIC PROSECTIONS.....APPELLANT**

**VS**

**GEPRGE WAINAINA GAKUNYI.....RESPONDENT**

*(Being an appeal from the original acquittal in the Chief Magistrate's Court at*

*Kiambu, E. Michieka PM, Criminal Case NO. 226 of 2015 dated 20<sup>th</sup> December, 2016)*

**JUDGMENT**

1. This is an appeal filed by the Director of Public Prosecutions under the provisions of **Section 348A** of the Criminal Procedure Code against the acquittal of **GEROGE WAINAINA GAKUNYI** by the Kikuyu Chief Magistrate's court. Directions were given to the parties to file their submissions in this appeal and on 4<sup>th</sup> May, 2021 today's date was given for this Court to issue its judgment.
2. The appeal will be determined on one single issue raised by the respondent. The respondent submitted that the DPP filed its appeal out of time and in contravention of this Court's orders of 27<sup>th</sup> July, 2018.
3. The Chief Magistrate's Court's judgment, the subject of this appeal was delivered on 20<sup>th</sup> December, 2016. DPP filed before this Court an application on 22<sup>nd</sup> February, 2017. DPP sought leave of this Court to file its appeal out of time. DPP should have filed its appeal within 14 days as set out in **Section 349** of the Criminal Procedure Code. That Section provides:-

***“An appeal shall be entered within fourteen days of the date of the order or sentence appealed against: Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court thereof.”***

4. By this Court's ruling delivered on 27<sup>th</sup> July, 2018 this Court granted DPP leave to file an appeal out of time. That appeal was ordered to be filed within 14 days from the date of that Ruling. The 14 days period was up to 10<sup>th</sup> August, 2018. Notwithstanding the passage of time which was in excess of the 14 days period ordered in the Ruling, DPP filed its appeal on 24<sup>th</sup> October, 2018. DPP did not seek further leave to file an appeal out of time. It follows that the appeal before me is filed out of time and without leave of the court.
5. The High Court in the case **SAMSON OWITIN OTAMBO VS. RPEUBLIC (2018) eKLR** considered a criminal appeal filed out of time without leave and making reference to the Supreme Court decision in Civil matter stated:-

***“8. The Supreme Court of Kenya in S.C. APPL. NO. 38 OF 2014 BETWEEN TSC VS. SIMON KAMAU AND 19 OTHERS, adopted its earlier decision in NICHOLAS KIPTOO ARAP KORIR SALAT V. THE IEBC & 7 OTHERS SC APPL. NO. 16 OF 2014 and stated:***

***“To file an appeal out of time and seek the Court extending time is presumptive and inappropriate. No appeal can be filed out of time without leave of Court. Such filing renders the “document” so filed a nullity and of no legal consequences. Consequently, this Court will not accept a document filed out of time without leave of the Court. The S.C. further held that a document (Petition filed out of time without leave of Court is irregular and unknown in-law and the same should be struck out. Where one intends to file an appeal out of time, what he can do is to annex the draft intended Petition of Appeal for the Court's perusal when making***

*his application for extension of time, and not to file an appeal and seek to legalise it.”*

6. It follows that this appeal having been filed out of time without leave of the court it is irregular and is unknown in the law.

7. Accordingly and for this reason, this appeal is hereby dismissed.

**JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 24<sup>TH</sup> DAY OF JUNE 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Ndege

Appellant: DPP Mr. Kasyoka

For Respondent: N/A

**COURT**

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**