



**IN THE HIGH COURT AT HOMA BAY**

**CRIMINAL APPEAL NO. 102 OF 2014**

**BETWEEN**

**RONALD ALOO AUGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original ruling and order in Inquest No. 1 of 2010 at the Principal Magistrates Court at Oyugis by Hon. S. N. Makila, RM, dated 19<sup>th</sup> October 2012)*

**RULING**

1. This appeal arises from an inquest conducted to inquire into the death of **PHILIP OTIENO ODHIAMBO** ('deceased'). After hearing the witnesses, the learned magistrate found that the death of the deceased was caused by commission of an offence by **RONALD ALOO AUGO** ("the appellant"). She ordered that that the appellant be arrested and charged with manslaughter contrary to **section 202** of the *Penal Code (Chapter 63 of the Laws of Kenya)*.

2. The appellant now appeals against the findings and order of the subordinate court. It is trite law that a right of appeal must be granted by statute and in the absence of such a statutory right, the court has no jurisdiction (see *Munene v Republic (No. 2) [1978] KLR 105* and *Owners of the Motor Vessel Lillian 'S' v Caltex Oil Kenya Ltd [1989] KLR 1*).

3. Appeals in criminal matters are provided for generally under the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*. **Part XI** thereof deals with appeals from the subordinate court to the High Court. The relevant sections provide as follows:

***Appeals to the High Court***

*Save as is in this part provided –*

*a. A person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court.*

*b. Repealed*

**348. *No appeal on plea of guilty, nor petty cases***

*No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.*

**348A. Right of appeal against acquittal, order of refusal or order of dismissal**

*When an accused person has been acquitted on a trial held by a subordinate court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court, the Director of Public Prosecutions may Appeal to the High Court from the acquittal or order on a matter of law.*

4. Inquests are conducted pursuant to the provisions of **Part XII** of the **Criminal Procedure Act** and no right of appeal is provided for thereat. An order made in an inquest does not fall within the provisions of **Part XI** of the **Criminal Procedure Code** which I have outlined above nor is the appellant herein a person convicted within the meaning of **section 347** of the **Act**.

5. This appeal is therefore incompetent because it is an appeal against a finding and order in an inquest and the appellant is not a person convicted. It must therefore be struck out and it is hereby struck out.

**DATED** and **DELIVERED** at **HOMA BAY** this 24<sup>th</sup> day of November 2014.

**D.S. MAJANJA**

**JUDGE**