

REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Criminal Application 26 of 2012

REPUBLIC.....APPLICANT

~VERSUS~

FARAJ NYATUNDO.....RESPONDENT

RULING

The Director of Public Prosecutions wishes to appeal the decision of the subordinate court to acquit the Respondent under section 210 of the Criminal Procedure Code on a charge of stealing contrary to section 275 of the Penal Code and the alternative charge of handling suspected stolen property contrary to section 323 of the Penal Code. The acquittal followed various adjournment requests by the prosecution whose witnesses were not being availed. When the last request was denied and the prosecution had no witness the court made the order.

The order subject of the appeal was made on 3/4/2012 and the application was made on 8/5/2012. It is evident that, considering that an appeal ought to have been filed within 14 days, the delay was for less than a month. It was explained that on 11/4/2012 the complainant sought copies of proceedings and paid for the same. They were not availed until 24/4/2012. The complainant then went to an advocate who advised him to seek an appeal through the Director of Public Prosecutions. In the meantime, time had run out.

I have looked at the replying affidavit by the Respondent. He basically supports the court's decision to acquit him. The merits of the decision will be the subject of the appeal.

I have found there are sufficient reasons that made the Director of Public Prosecutions to be caught up with time. In any case, the delay was neither long nor inordinate. I allow the chamber application and ask that the appeal be filed in 14 days.

Dated, signed and delivered at Bungoma this 17th day of October, 2012.

A. O. MUCHELULE
JUDGE