



(From original conviction and sentence in Criminal Case No.258 of 2008 of the Principal Magistrate's court in Maralal – T. MATHEKA, AG. PM)

REPUBLIC.....APPLICANT

VERSUS

MOSES KARANJA MACHARIA.....1<sup>ST</sup> RESPONDENT

JENNIFER MALITO LEKISAAT.....2<sup>ND</sup> RESPONDENT

NYAWEKA MUCHERA.....3<sup>RD</sup> RESPONDENT

RULING

**MOSES KARANJA MACHARIA, JENNIFER MALITO LEKISAAT and ANN NYAWEKA MUCHERA**, the Respondents, were charged with some criminal offence in Maralal SRM Cr. Case No. 258 of 2008, the particulars of which I have not been given. They were acquitted on 12<sup>th</sup> August, 2008. Being dissatisfied, the state wishes to appeal against that acquittal. As it was supplied with copies of the proceedings on 15<sup>th</sup> September, 2008, long after the period of 14 days allowed for appeal had expired, it has applied for leave to appeal out of time.

The Respondents are not amused by the application. They have strongly opposed the Application on the grounds that the same is unmeritorious and that it has been brought after inordinate delay. Their counsel, Mr. Orina, has argued that the state having not disclosed the point of law it wishes to appeal on, its application is bad in law and should be struck out. In addition, he said, after the state was supplied with a copy of the proceedings on 15<sup>th</sup> September, 2008, it took two months to file this application, and even after that it took 8 months before it filed the certificate of urgency to have the application heard on priority. For those reasons, he urged me to dismiss this the application.

I have considered the matter. Although **Section 349** of the **CPC** which authorizes the court to grant the state leave to appeal out of time does not state that the grounds of appeal should be disclosed in such application, it follows from the restriction to appeal only on a point of law that the point of law should be disclosed. Otherwise how does the court know if the appeal will not be frivolous and not on a point of law? Since **Section 348A** of the **Criminal Procedure Code (CPC)** permits the state to appeal against an acquittal only on a point or points of law, in an application like this, the state should disclose the point or points of law it wishes to appeal on. That it can do in the affidavit in support of the application or by attaching a draft petition of appeal. It has not done that. The affidavit in support of the application talks of an attached petition of appeal but none was attached. In the circumstances I agree with Mr. Orina that this application is bad in law.

The application is also for dismissal for indolence. After it was supplied with proceedings, the state took 2 months before filing this application. The delay has not been explained.

For these reasons, I dismiss this application.

**DATED and delivered this 27<sup>th</sup> day of October, 2009.**

**D. K. MARAGA**

**JUDGE.**