

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Crim Misc Appli 103 of 2005

REPUBLIC APPLICANT

VERSUS

JOHN SHIKUKU AMEDO RESPONDENT

(From original criminal case No. 208 of 2003 of the PM's court at Migori)

RULING:

The state applies for extension of time in which to file an appeal.

Respondent was charged for offence of assault contrary to s.251 Penal Code. 6 witnesses were called. The Respondent was acquitted under s.210 Penal Code for lack of case to answer. It was submitted that ruling was on 12th July 2005. Application for proceedings was made on the same day and deposit paid. However they were supplied on 15th November 2005.

It was pointed out that the application was brought under the wrong provision of the law. It is brought under s. 349 of the penal code. That section do not provide for extension of time.

Mr. Kemo conceded that indeed the application was under the wrong provisions of the law. It should have been brought under the criminal procedure code and not the Penal Code.

That is very clear from a reading of the two Acts. Court cannot excuse bringing of the application under the wrong provisions. It was not drawn by a layman.

In the circumstances the application is rejected.

Dated 16th March 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Chirchir for State