



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL APPEAL 222 OF 2002**

**(From the Original Conviction(s) and Sentence(s) in Criminal Case No. 361 of 2001 of  
Senior Resident Magistrate's Court at Kajiado: Ndungu H.N (Miss) SRM on 20/9/02)**

**DUNCAN NDIRANGU.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**J U D G E M E N T**

This is an appeal arising out of the judgment of the Senior Resident Magistrate Kajiado in Criminal Case 361 of 2001 where the appellant was charged with the offence of breaking into a building and committing a felony Contrary to Section 306 (a) of the Penal Code. In the alternative, he was charged with the offence of handling stolen goods Contrary to Section 332 (2) of the Penal Code.

After a full trial he was convicted and sentenced to serve on Community Service for a period of one year. He was dissatisfied with the conviction and sentence against which he appeals.

At the hearing of the appeal the State Counsel has raised the issue of whether the appeal was filed in time and if not, whether there was leave of the court to file it out of time. The appellant was sentenced to Community Service Order on 20/9/02. This appeal was not filed till 25/10/02 a period of over thirty days. The appellant filed the appeal in person though he later engaged Mr Mutuku as counsel. Mr Mutuku merely states that he is instructed that the appellant sought leave of the court to file this appeal. There is no evidence that such leave was sought and court will not go into the merits of the appeal at this stage. It hereby struck out for being incompetent. The appellant has leave to file another appeal after he complies with procedure.

Dated at Machakos this 10<sup>th</sup> day of November 2004

Read and delivered in the presence of

**R.V. WENDOH**

**JUDGE**