

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO.322 OF 2001

(Being an Appeal from Original Conviction and Sentence in Criminal Case No.4186 of 2000 of the Snr. Resident Magistrate's Court at Mombasa – L. Achode, SRM)

REPUBLIC APPELLANT

VERSUS

SHADRACK MUNYASIA RESPONDENT

RULING

The State is entitled to appeal even in the case of acquittal in a criminal case. However the procedure must be complied with. The appeal was filed 2 days late and no reason is given except that the complainant gave instructions after the time to appeal had expired (6th September) and the appeal was filed the following day without leave. Section 349 Criminal Procedure Code states in mandatory terms that the appeal shall be entered within 14 days from date of order or sentence appealed against. The proviso states that a late appeal may for good cause be admitted after period has elapsed. And court shall so admit. If it is satisfied that delay was caused by inability to obtain a copy of judgment or order appealed from within a reasonable time of applying to the court for the same. No such circumstances appear here. Instead the State Counsel verbally applied to be allowed to make the necessary application.

This being a criminal case the law must be applied strictly. I do not see any ground upon which the preliminary objection can be rejected.

I therefore dismiss this appeal as being filed out of time and there being no sufficient cause shown for delay.

Dated at Mombasa this 20th Day of March, 2002.

J. KHAMINWA
COMMISSIONER OF ASSIZE