

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 118 OF 1999

**(Appeal against acquittal by the Principal Magistrate at
Kericho in Criminal Case No. 2028 of 1998**

REPUBLIC.....APPELLANT

V E R S U S

JOEL CHERUIYOT MITEI.....RESPONDENT

J U D G M E N T

The respondent in this appeal was charged with the offence of manslaughter contrary to Section 202 of the Penal Code.

The charge was defective in that it did not include the penalty Section. But none of the parties addressed me on this issue. Be it it may, the respondent was acquitted.

The state did not appeal in time and filed Misc. Application No. 55 of 1999 for leave to appeal out of time. I heard the application on 18th June, 1999 and allowed the appellant to file his appeal within 10 days from that date. The appeal was not filed until 29th June, 1999. Mr. Mbeche's submission is that the appeal was filed 12 days after the date of the order. Mr. Onderi said that the position was regularised by admission of the appeal. This argument cannot be correct. Admission of an appeal cannot make it any better nor does an admission of appeal make it competent if it is not.

The order for enlargement of time was given on 18th June, 1999. Generally in computation of time the first day is excluded and the last day included. Ten (10) days therefore should have been counted from 19th June, 1999. Consequently, ten days ended on 28th June, 1999. The appeal was filed on 29th June, 1999. As 28th June, 1999 was a working day the ten days allowed by the court expired on that day.

The appeal filed thereafter was filed out of time and without the leave of the court. The appeal before me is therefore incompetent. I do not have to go to the interesting arguments raised before me by the learned state counsel Mr. Onderi, for the Appellant and the learned Counsel Mr. Mbeche for the respondent.

The appeal is struck out.

Dated and delivered at Nakuru this 24th day of March, 2000.

D. M. RIMITA

JUDGE

24.3.2000