

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 138 OF 2014

BETWEEN

MARTIN ALOO ARUNGA
APPELLANT

AND

REPUBLIC
RESPONDENT

(Being an appeal from an order of Hon. B. K. Rugut, RM dated 18th November 2014 in Ndhiwa Principal Magistrates Court Criminal Case No. 334 of 2014)

RULING

1. This is an appeal against an order made on 18th November 2014 wherein the learned magistrate declined to uphold an objection by counsel for the accused. Counsel for the accused objected to the testimony of a witness, PW4, on the ground that he had not been supplied with witness statements earlier.
2. Under **section 347** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)* a right of appeal is only conferred upon, “*a person convicted on a trial held by a subordinate court of the first or second class.....*” The appellant is not a person convicted hence the appeal does not lie. This appeal is therefore incompetent and is struck out.
3. The appellant’s complaint is that he has been ambushed with evidence and there is likelihood of breach of **Article 50(c)** and **(I)** of the Constitution which entitle the accused to evidence in advance and sufficient time to prepare for the defence. The proper remedy in such cases is for the trial court to ensure that the accused has the evidence in advance and is given sufficient time to study it and prepare his defence.
4. However, in light of the position I have taken, nothing further can be said.

DATED and **DELIVERED** at **HOMA BAY** this 10th day of March 2015.

D.S. MAJANJA

JUDGE

Mr Kisera, instructed by Omonde Kisera and Company Advocates for the appellant.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.