



Atieno v Republic

Court of Appeal, at Kisumu June 17, 1985

Gachuhi Ag JA

Criminal Application No NAI 5 of 1985 (KMU 2/85)

(Application from a ruling of the High Court at Kakamega, Aganyanya J,

Criminal Appeal No 78 of 1984)

Extension of time – appeal - application for leave to file appeal out of time - to reinstate an application for leave to appeal – effect of refusal by High Court – whether appeal lies against such a refusal - section 361(8)(b) of the Criminal Procedure Code.

Advocate – failure by advocate to file appeal on time - consequences. The applicant gave instructions through his mother to a different advocate from one who originally handled the trial. No appeal was filed within the prescribed time. An application was made for leave to file the appeal out of time which was refused by the High Court.

Held:

1. Under section 361(8)(b) of the Criminal Procedure Code no appeal lies against a refusal by the High Court for leave to file the appeal out of time.
2. The principle of law is that the principle is bound by the acts of his agents who had authority to act.
3. While the applicant seeks justice the law has provided justice whether rightly or wrongly, there is nothing that can be done against the provision of the statute.

Application dismissed.

Cases

No cases referred to.

Statutes

Criminal Procedure Code (cap 75) sections 349, 361 8(b)

Advocates

Mr Bwonwonga for Republic

June 17, 1985, Gachuhi Ag JA delivered the following Ruling. The applicant is now applying for leave to reinstate an application for leave to appeal out of time. The matter was being handled by his Counsel

when he was in jail. He gave instructions through his mother to a different advocate who was not originally in the trial to appeal. No appeal was filed within the time prescribed. This may have come to light when an appeal was filed and possibly rejected after the expiry of the statutory period.

An appeal was made for leave to file the appeal out of time which was refused by the High Court.

Mr Bwonwanga on reading the provisions of section 361 8 (b) of Criminal Procedure Code states that no appeal from the decision of the High court for refusal as the refusal is final. The applicant cannot blame his counsel.

I quite agree that the applicant cannot blame his counsel and he is bound by the acts of his counsel. The principles of the law is that the principal is bound by the acts of his agents who had authority to act. On the other hand, the law does not permit the applicant to file an appeal where the application was refused under section 349 as provided by section 361 as amended by (8) (b) sub section which provision is that the refusal is final.

While the applicant seeks justice, the law was provided justice whether rightly or wrongly, there is nothing that can be done by this Court against the provision of the statute. This application is dismissed.