



**Gathekia v Republic (Criminal Appeal E026 of 2022)  
[2022] KEHC 14854 (KLR) (19 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14854 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL APPEAL E026 OF 2022  
GL NZIOKA, J  
OCTOBER 19, 2022**

**BETWEEN**

**MBOGO CHEGE GATHEKIA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Court- I note from the record herein that on August 10, 2022, the applicant herein filed a notice of motion application dated August 10, 2022 seeking for orders inter alia, that he be released on bond pending the hearing and determination of the appeal filed herein. He was subsequently released on bond of Kshs 100,000 one surety of like amount or cash bail of Kshs 30,000. He now seeks to withdrawal the appeal on the ground that, he has made payment and compromised the same. However, the prosecution/ respondent concern is that, the court do confirm that, he has fully paid the sums due or complied with the sentence terms. A perusal of the lower court record indicates that, he was sentenced to pay a fine of Kshs 10,000 and pay the complainant Kshs 55768 in default to serve one (1) year imprisonment.
2. As a matter of fact, the court cannot deny the appellant the right to withdrawal his own appeal.
3. As regards the prosecution concern, the same can only be dealt with by the trial court. The effect of withdrawal of the appeal is to revert the appellant to the status he was in at the point after conviction and sentence. In that regard I direct that, the lower file be returned to the trial court for enforcement of the sentence imposed or confirmation that, the same has been complied with and/or served. The matter will thus be mentioned before the Senior Principal Magistrate at Engineer on the October 27, 2022 to ensure the order herein is complied with.



4. In the meantime the appeal file herein HC Cr Appeal No E026 of 2022 and HC Misc Criminal application No E050 of 2022, shall both be closed accordingly. The Hon Deputy Registrar to extract the order herein and serve it upon the parties herein and the SPM at Engineer Law Court forthwith.

**GRACE L. NZIOKA**

**JUDGE**

**19/10/2022**

