



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL APPEAL NO. 144 OF 2018**

**WILSON ALAKONYA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

**UPON** Reading the Court file it is clear that the first complaint by the Applicant is made out. It is clear that the trial court namely Hon. B. Ochieng, CM heard the application for withdrawal on 24<sup>th</sup> April, 2017. The Applicant was not represented. The record shows that the trial court did not bother to explain to the Accused, the full implications of a Section 87 (a) withdrawal.

In the circumstances his consent to the withdrawal cannot be considered informed consent. The trial court failed to provide a fair hearing by failing to ensure the Appellant could understand the proceedings.

Further, the Order made is based on an incorrect understanding of the Section. The Prosecution is given leave to withdraw and they then have to take steps to formerly withdraw. The trial court failed to ascertain the character of documents to be received from India, if any. "Some documents" were never described and therefore their relevance to the proceedings was purely speculative.

The trial court took upon itself to step into the shoes of the Prosecution. The Prosecution now before the Court does not oppose the application.

Therefore it is ordered that the withdrawal of the charge on 24<sup>th</sup> April, 2017 be and is hereby reversed. Trial to continue as per Charge Sheet dated 10<sup>th</sup> April, 2017 before a different Judicial Officer.

Orders accordingly.

**FARAH AMIN**

**JUDGE**

**DELIVERED, SIGNED AND DATED IN KAKAMEGA ON THIS THE 24TH DAY OF MARCH 2021.**

Ruling read in presence of Mr. Munyendo and Mr. Mutua.