



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION- MILIMANI COURT

CRIMINAL APPEAL NO. 987 OF 2001

GEORGE MAINA NDUNG'U.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Upon arraignment, George Maina Ndungu the Appellant was charged jointly with six (6) others with two counts of stealing goods in transit contrary to **Section 279 (c)** of the Penal Code; forgery contrary to **Section 349** of the Penal Code; and uttering a document with intent to defraud contrary to **Section 357 (b)** of the Penal Code.
2. Having been taken through full trial, they were found guilty of stealing goods in transit, convicted and sentenced to serve eighteen years imprisonment, plus administration of corporal punishment on the 19th day of December, 2001.
3. Aggrieved, he exercised his right of appeal by appealing against the conviction and sentence.
4. On 20th December, 2001, he applied to be released on bail pending appeal, an application that was allowed. The court granted him Ksh. 200,000/- surety recognizance. Particulars of his surety were as follows:

Njoroge Mwangi

Identity Number 6440642

P.O. Box 56301

Telephone Number-212201

House- 787461

Residential- Buruburu Estate (Prudential Estate)

House Number 24(Owner)

Friends contact: Occupation-Sparkling Cleaners

P.O. Box 56301, Telephone No. 212201, Loita Street, Uniafric House.

5. The Surety presented security which was a Logbook Serial Number 579672 for Motor vehicle Registration Number KAK 789 M. The Appellant did not follow conditions set, he absconded and his surety who promised to supervise him by ensuring his attendance in court did not report to court. He was therefore required to show cause as to why the recognizance could not be estreated. The surety having failed to discharge his duty and the police having failed to execute the warrant of arrest issued for both the Appellant and his surety, the court was mandated to recover the security by issuance of a warrant for attachment of the security which was movable property that should have been sold. (**See Section 131(2)** of the Criminal Procedure Code).
6. The Appellant having been released on 24th December, 2021 and having absconded, the case was mentioned by several Judges, namely:

Mbito J, Lesiit J, Warsame J (As he then was), Njagi J, and Ngenye-Macharia J. I took over the matter on the 24th February, 2021 and there has been reluctance on the part of the ODPP and DCI, Railways to act as provided in law. The matter has been mentioned in court for the last twenty (20) years without execution of the warrants of arrest issued for both the Appellant and the surety.

7. **Section 357** of the CPC provides thus:

(1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

8. Upon being released on bond, the sentence meted out against the Appellant was suspended, and, having absconded twenty years ago, he is deemed to have abandoned the appeal. The sentence imposed was therefore not served. I therefore make orders as follows:

a) The DCI be and is hereby directed to arrest the Appellant and present him to Prison to serve his jail term.

b) The DCI shall arrest the Surety to be dealt with in accordance with section 131(4) of the Criminal Procedure Code.

c) This file be and is hereby be deemed to be closed.

8. It is so ordered.

Dated, Signed and Delivered Virtually this 19th Day of May, 2021.

L. N. MUTENDE

JUDGE