



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 11 OF 2006**

**DAVID MUTUIRI GIKENO ..... APPELLANT**

**VERSUS**

**REPUBLIC .....REPUBLIC**

**RULING**

1. This file was referred to me on 16<sup>th</sup> October, 2017 by Gikonyo J for directions. On 4<sup>th</sup> December, 2017, the court did not make any directions as the Station Archivist was said to be away on leave. The matter was therefore listed for further directions on 20<sup>th</sup> February, 2018.

2. On that day, the Appellant/Applicant told the court that he has been coming to court since 2003. That he knows nothing about the missing file. Mr. Namiti, Learned Prosecutor stated that he had nothing to state and left it to court.

3. I have considered the entire record. I have noted that there is a detailed report by the head of station of the Nkubu Senior Resident Magistrate's Court. It is dated 22<sup>nd</sup> January, 2018. The said report details the effort undertaken by the said court in trying to trace the original record. Further, on record is a letter dated 16<sup>th</sup> July, 2014 from the Officer in charge of Meru Main Prison addressed to Nkubu Law Courts and copied to this court. In that letter, there is an indication that the applicant had initially lodged an appeal in 2004 but the appeal documents disappeared.

4. The said letter further indicated that the applicant was allowed by this court to again lodge this appeal in 2006. The questions that beg are; what was the original appeal number? Could it be that the original record might have been put in that appeal? What was the fate of that original record? Was the prosecution ever served with the said original appeal? Was a record prepared therefor and if so, where is it? Does the prosecution still have the full record of the police file?

5. In my view, it is only after the foregoing questions are answered in one way or the other that this court can be able to give full directions as to the hearing of the applicant's Notice of Motion dated 16<sup>th</sup> October, 2017 that is pending on record.

6. Accordingly, I direct the Deputy Registrar of this court, to thoroughly undertake investigations and file a report in court within three (3) months in answer to the questions posed by the court in **paragraph 4 above**. Since there is already a detailed report from the Nkubu Law Courts, the Deputy Registrar should liase with both the Meru Main Prison on the contents of the letter dated 16<sup>th</sup> July, 2014 as well as the Office of the Public Prosecutor, Meru in undertaking the said investigations.

Orders accordingly.

**DATED and DELIVERED at Meru this 21<sup>st</sup> day of March, 2018.**

**A. MABEYA**

**JUDGE**