



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.78 OF 2016**

**JOHN MWANGI MAINA.....1<sup>ST</sup> APPELLANT**

**MARTIN K.WAMWEA.....2<sup>ND</sup> APPELLANT**

**SIMON WACHIRA KAGIRI.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

The only issue before me is whether the fines and the penalties deposited by the appellants herein ought to be released to them following their discharge on the 12<sup>th</sup> June 2018. In my judgment I made the finding that the prosecution still had the opportunity to bring proper charges against the appellants. No charge has been brought except that the state has filed an appeal.

In sentencing the appellants, the learned trial magistrate had made the following orders: -

- i. Each accused is sentenced to pay a fine of Ksh. 400,000/- in default 1-year imprisonment.
- ii. In addition, being a mandatory sentence each accused is sentenced to twice the amount lost by the County Government calculated at Kshs. 7,513,924/00 in default to serve 3 years' imprisonment.
- iii. Sentences to run consecutively. Cash bail deposited herein be released to the depositors.

In opposing the application for the release of the fines paid to the appellants Mr. Magoma for the DPP submitted that the office of the DPP had filed an appeal against this court's judgment discharging the appellants.

Counsel for the appellants were of the view that no application had been made to stay the release of the said monies to the appellants pending the hearing and determination of the appeal.

In the end Mr. Magoma left it to the court.

While the discharge of an accused person does not bar the ODPP from bringing fresh charges against the same accused on the same facts, the accused person is basically free until the moment that 'sword of Damocles' lands on him and he is arraigned in court.

There being no application for stay of the release of the monies to the appellants, and there being no orders of stay, there is no justifiable reason to continue holding the said monies. I allow the application for the release of the fines to the appellants.

**Dated, delivered and signed at Nyeri in open court this 24<sup>th</sup> September 2018.**

**Mumbua T. Matheka**

**Judge**

In the presence of:

C/A Albert

Mr. Ng'ang'a for 1<sup>st</sup> appellant, also for holding brief for Mr. Nderitu for 2<sup>nd</sup> appellant,

Ms. Nyakio Munene holding brief for Muchiri was Gathoni for 3<sup>rd</sup> appellant

Mr. Magoma for the state