



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL CASE NO. 4 OF 2017

PETER GITAUAPPELLANT

-Versus-

REPUBLIC.....RESPONDENT

RULING

1. **PETER GITAU** was convicted of the offence of defilement before Senior Magistrate's court at Maralal. He was aggrieved by that conviction and sentence and accordingly preferred an appeal, being Criminal Appeal No. 123 of 2011, before Nakuru High Court. When he appeared before Nakuru High Court on 27th June 2012 he withdrew his appeal

2. Gitau has filed a Notice of Motion dated 20th January, 2017 seeking to have his appeal reinstated. He explained in an affidavit in support of that application that he withdrew that appeal because he was misadvised in prison by his fellow prisoners. He now has retained counsel and is desirous of reviving his appeal. He attributes his withdrawal to confusion which resulted from the advice he received.

3. The right to be heard is a basic constitutional right. This was well stated in the case **JULIET WANGUI NDEGWA V FRANCIS JAMES NDEGWA [2016] eKLR** where Justice John M Mativo stated.

“The right to a hearing has always been a well –protected right in our constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent jurisdiction to dismiss suits, this should be one in circumstances that protect that integrity of the court process from abuse that would amount to injustice and at the end of the day there should be proportionality.”

4. That being so, and since this court has discretion to allow the application the court finds there is sufficient grounds to allow the application. The applicant was misadvised and now wishes to be heard on his appeal.

5. This court grants the following orders:

(a) The withdrawal of the appeal by Peter Gitau on 27th June, 2011 is set aside.

(b) Nakuru High court Appeal No. 123 of 2011 is hereby reinstated save that it shall be accorded another number by Deputy Registrar of this court. The Deputy Registrar shall prepare the record of appeal

(c) That appeal shall be mentioned on 22nd May, 2017 for directions on the hearing of the appeal

Dated and Delivered at Nanyuki this day 29th of March 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Ndungu

Appellant: Peter Gitau

For appellant

For state:

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE