

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 79 OF 2011

BETWEEN

NIXON ODARI SEMERE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against both conviction and sentence of the learned trial Magistrate L.O Onyina, SRM dated n13.05.2011 in Vihiga P.M. Criminal Case No. 1130 of 2009)

R U L I N G

1. This appeal proceeded before me on 16th March, 2017, after which I reserved judgment for 25th May, 2017. Due to circumstances that were beyond the control of the court, judgment was not ready on the 25th May, 2017. The same was stood over to 13th July, 2017.
2. When I eventually retired to write the judgment, and on careful perusal of the records, I found that the appellant's co-accused, Stanley Musambi Sakasa also filed Criminal Appeal No. 78 of 2011. From the records Criminal Appeal Number 78 of 2011 has neither been admitted nor dealt with in any way.
3. In the circumstances, it would be imprudent for me to proceed to write and deliver judgment in the present appeal without considering the fact that a related appeal is pending admission, hearing and determination, for to do so is likely to result in conflicting findings in matters whose genesis is one.
4. For the above reason, I declare the hearing of the appellant's appeal a mistrial and accordingly no judgment shall be delivered on it until the appellant in Criminal Appeal Number 78 of 2011 is availed and the appeals consolidated for hearing and determination.

It is so ordered

Ruling delivered, dated and signed in open court at Kakamega this 13th day of July 2017

RUTH N. SITATI

JUDGE

In the presence of;-

Present in Person.....for appellant

Mr. Ng'etich (present).....for state

Polycap.....court assistant