



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CRIMINAL APPEAL NO. 37 OF 2014

ISAIAH MWANGI GICHIRA....APPLICANT/APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The appellant **Isaiah Mwangi Gichera** was convicted for the offence of Burglary contrary to **Section 304 (2)** and stealing contrary to **Section 279 (b)** of the **Penal Code** and sentenced to six years imprisonment by the **Principal Magistrate Baricho Court**.

2. He raised five grounds in his appeal and states that he pleaded not guilty. That the magistrate erred in law and fact by relying on shoddy investigations, failed to consider that the evidence was not corroborated and was full of contradictions and failed to consider his defence. He further stated that the sentence of six years was harsh.

3. His prayer was that the conviction be quashed and the sentence be set aside. However, when the appeal came up for directions, the appellant stated that he did not wish to pursue the appeal as the prison sentence has helped him to change and given him new knowledge and skills.

The State did not oppose the decision by the appellant to abandon the appeal.

4. I have considered the application by the appellant. The appellant had the right to appeal and more so to pursue the appeal to its logical conclusion. However, having made a decision to abandon the appeal, he cannot be compelled to pursue the appeal.

This Court could only consider whether he was properly convicted and sentenced if he proceeded with the appeal. The duty of this Court to analyse the evidence and make an independent finding was extinguished the minute the appellant decided to abandon the appeal.

In the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR** the Supreme Court held:-

“A party’s right to withdraw a matter before the court cannot be taken away. A court cannot bar a party from withdrawing his matter. All that the court can do is to make an order as to costs where it is deemed appropriate.”

In the case of **Charles Mwangi Kimuya & 2 Others -V- Republic [2012] eKLR** the appellants withdrew their appeals but sought to be allowed to offer mitigation on the sentence. The court held:

“The purpose of a prison sentence is to provide to the offender punishment that is commensurate to the gravity of offence as atonement to the wrong done to the society, while at the same time allowing for the offender’s rehabilitation. I am therefore pleased to note that each of the offenders acknowledges their mistake and state that they have learnt the errors of their ways. This means that they are well on their way to rehabilitation. It is however, necessary for each appellant to serve the remainder of their sentence as a reflection of the gravity of the offence.

In the case of **Peter Gichago Muraguri V Republic [2007] eKLR** the appellant withdrew his appeal and the court held:

“I think it would be fair and just to allow the appellant to withdraw his appeal so that he serves the balance of his sentence”.

In my view, since the appellant has elected to withdraw the appeal and he did not seek to mitigate on the sentence then the appeal is

terminated and the file is closed. The appellant claims that he has changed, has learnt about some characters in the Bible and is at peace with his situation. He will therefore serve the remainder of the sentence to pay for his sins. The appeal is terminated and the conviction and sentence will stand.

Dated and delivered at Kerugoya this 21st day of December, 2017.

L. W. GITARI

JUDGE

The ruling read out in open Court, appellant present, Mr. Obiri State Counsel for State, court assistant Naomi Murage this 21st day of December, 2017.

L. W. GITARI

JUDGE

21.12.2017