



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**HCCRA NO. 18 OF 2015**  
**(FORMERLY MERU HCCRA NO. 58 OF 2006)**

**MAWIRA MUINDU MOSES .....APPELLANT**

**- VERSUS -**

**REPUBLIC.....RESPONDENT**

***(An Appeal from the Judgment and conviction of A.N. KIMANI – P.M made on 27/4/2006 in Marimanti Principal Magistrate’s Court in Criminal Case No. 570 of 2005)***

**RULING**

1. Mawira Muindi Moses, the Appellant appealed to this court from a conviction on Robbery with violence in Marimanti Criminal Case No. 570 of 2005. He filed two appeals, to wit, Meru HC Cr. Appeal No. 51 of 2006 and 58 of 2006, respectively. It would seem that Meru HCCA Appeal No. 51 of 2006 was marked as withdrawn on 17th June, 2010.

2. From 23rd September, 2015, this Appeal has come up in court severally but the Appellant was not being produced. In this regard, on 30th June, 2016, this court issued summons to the Officer in Charge of the Meru G.K Prison to appear in court on 20th July, 2016 and explain the whereabouts of the Appellant. On that date, one Sergeant Sololo Abdikar from Meru G.K. Prison appeared on behalf of the incharge of that prison. He told the court on oath that, according to the records held by that prison, the Appellant was released on appeal on 31st October, 2008. That his Appeal No. 58 of 2006 was allowed and that he was consequently released from prison. That the prisons authorities had proceeded to the Meru High Court and confirmed that the records held by that court showed that the Appellant had been released in Meru HC Cr. Appeal No. 58 of 2006. That the proceedings had been undertaken in the lower court file Marimanti Criminal Case No. 570 of 2005. That the Prisons Discharge Register indicated that the appellant had been released on 31/10/2008. He urged the court to close the file. Mr. Ongige learned counsel for the state likewise urged the court to mark the appeal as overtaken by events.

3. This court has perused the entire record. The court has noted that the Meru H.C Cr. Appeal No. 58 of 2006 first came before **Lenaola J** on 29th October, 2007. He directed that the Appellants be produced on 31/10/2007. The proceedings were recorded in the lower court filed Marimanti Cr. Case No. 570 of 2005. The proceedings proceeded until 27th May, 2008 when the appeal was heard. The record shows that the state conceded the appeal and indicated that it would not be seeking a retrial. Then the court, **Emukule** and **Ouko JJ**, reserved the Judgment for 30th July, 2008. That marks the end of the proceedings.

4. By a letter dated 11th July, 2016, the Deputy Registrar, High Court Meru wrote to the Deputy Registrar of this court vide a letter referenced JUD/MRU/HCCRA 58/2016 reiterating the foregoing. He indicated that the judgment of the court could not be traced. He indicated that he is certain that the Appellant was

released.

5. Having considered the entire record, this court is unable to ascertain what the outcome of Meru H.C CRA No. 58 of 2006 was. The copy of the judgment is missing from the lower court file which was sent to this court vide the letter dated 11th July, 2016. Since the Deputy Registrar, Meru High Court did not indicate what the records, ie the Criminal Register at Meru where the outcome of the proceedings is recorded indicates, this court is unable to determine whether the Appellant was released or not.

6. Accordingly, since this file was fully heard (and probably determined) in Meru, and since the Master Criminal Register which will contain all the information regarding this appeal is held in that station and since no significant proceedings have been undertaken by this court, the justice of the matter requires that the file be returned back to Meru High Court so that the confusion caused be sorted out there.

Accordingly, this file is hereby transferred to Meru High Court for appropriate orders.

**DATED and Delivered at Chuka this 31st Day of August, 2016.**

**A.MABEYA**

**JUDGE**

Ruling read in open court in the presence of the state counsel but in the absence of the Appellant.

**A.MABEYA**

**JUDGE**

**31/8/2016**