



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CRIMINAL APPEAL NO. 398 OF 2007**

**FRANCIS KARANI NJOGU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

This appeal was set to be heard on 11<sup>th</sup> February, 2015. On that day, counsel for the state, Mr Njue, informed the court that the appellant together with one Meshack Mugo Muchiri had filed another set of appeals against a judgment in a trial in which the two had been jointly charged and tried; these appeals, according to the state counsel had been marked as abandoned on 12<sup>th</sup> June, 2008, apparently because the appellants had been granted a presidential pardon. That being the case the state counsel asked this court to dismiss this appeal together with **Criminal Appeal No 397 of 2007** filed by Meshack Mugo Muchiri as being an abuse of the due process of the court.

I have had the opportunity to look at the original record in the **Karatina Senior Resident Magistrates' Court Criminal Case No. 1477 of 2004** and noted that indeed it is a case in which both **Meshack Mugo Muchiri** and **Francis Karani Njogu** were jointly charged, tried and convicted of the offence of stealing motor vehicle parts.

Being dissatisfied with the decision in that case both Meshack Mugo Muchiri and Francis Karani Njogu respectively filed in this court **Criminal Appeal No. 290 of 2007** and **294 of 2007**; the original files in those two appeals were also brought to my attention and I have had the opportunity to read them.

The record in **Criminal Appeal No. 290 of 2007** shows that when the appeal came up for hearing on 12<sup>th</sup> June, 2008, the appellant was absent but the state counsel whose name is entered in the record as one Ngalyuka told the court that:-

***“I understand the appellants were released on presidential amnesty. The appeals may be marked as abandoned.”***

The court (M.S.A Makhandia, J., as he then was) then ordered:-

***“The two appeals Cr. App. No. 290 of 2007 and 294 of 2007 are hereby marked as abandoned, the appellants having been released on presidential amnesty.”***

No entry was made in **Criminal Appeal No. 294 of 2007** and it is not clear whether that appeal was also

set for hearing on the material date and whether the appellant was in court when the order marking the appeal as abandoned was made. Be that as it may, the order made in **Criminal Appeal No. 290 of 2007** applied with equal force in **Criminal Appeal No. 294 of 2007** and the two appeals are deemed to have been 'abandoned' because the appellants were released on presidential amnesty.

Curiously, by applications dated 24<sup>th</sup> October, 2007 filed by **Francis Karani Njogu** and **Meshack Mugo Muchiri** as chamber summonses in **Miscellaneous Criminal Application No. 75 of 2007** and **76 of 2007** respectively (whose original records were also availed for my perusal), the said applicants sought to be granted leave to file their respective appeals out of time against the same convictions and sentences for which they had ostensibly been pardoned. It is interesting to note that the reason given for the delay in filing of the appeals was the failure by the subordinate court to provide certified copies of the proceedings in time! Nevertheless, these applications were heard and granted *ex parte* on 18<sup>th</sup> December, 2007.

Armed with the court's leave to file the appeals out of time, the appellants filed their appeals as **Criminal Appeal Nos. 397 of 2007 and 398 of 2007** respectively.

The record in **Criminal Appeal No. 398 of 2007** shows that both the appellants applied in their separate appeals to be released on bail pending the hearing and determination of those appeals; on 29<sup>th</sup> April, 2008 the two applications were consolidated in **Criminal Appeal No. 398 of 2007** and allowed. The appellants were subsequently released on bail.

It is against this background that the state counsel made the application to have the appeals dismissed for being an abuse of the due process of the court. The appellants, on their part, urged this court to proceed with the hearing of the appeals.

It is manifestly clear that the appeals in **Criminal Appeal Nos. 397 and 398 of 2008** ought not to have been filed for the simple reason that the appellants in those appeals had filed previous appeals against the decision in the same trial that is sought to be impugned in these subsequent appeals. If their first appeals were disposed of, one way or the other, it was not open to the appellants to open fresh appeals on the same issue; I would therefore agree with the state counsel that these subsequent appeals are an abuse of the process of the court and for that reason are hereby struck out.

There is, however, one thing that is not clear; although the court relied on the information of the state counsel that the appellants in both appeals had been released on a presidential amnesty, there is no evidence on record of such an amnesty; the information by counsel for that state was apparently given from the bar without any sort of backing, documentary or otherwise, from the prison authorities in which the appellants were imprisoned upon conviction. In order to clear the air on this issue, I would direct the state counsel to establish whether indeed such a presidential amnesty exists and a report to that effect by the prison authorities be filed in Criminal Appeal Nos. 290 of 2007 and 294 of 2007 within fourteen days hereof; accordingly those two appeals shall be mentioned in this court for further directions after fourteen days of the date hereof.

This order shall apply also in **Criminal Appeal No. 397 of 2007** and to the extent that it affects the **Criminal Appeal Nos. 290 and 294 of 2007**, I direct that this ruling be filed in those respective files.

It is so ordered.

**Dated, signed and delivered in open court this 15<sup>th</sup> day of May, 2015**

Ngaah Jairus

**JUDGE**