

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 290 OF 2013

JOHN MBURU WANYOIKE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The appeal herein is against the original conviction and sentence in Thika Chief Magistrates Court Criminal Case No. 3652 of 2005

When the appeal came up for mention on 4th March, 2014 the appellant told the court that his appeal against the decision in Thika Chief Magistrates Court Criminal Case No. 3652 of 2005 had been heard and allowed; according to him, he could not recall the number of his appeal case but he was sure that this court sitting in Nairobi had quashed his conviction and set aside the sentence meted out against him.

On 7th March, 2014 the learned counsel for the state Mr Njeru informed the court that upon the directions of this court which had been given on 4th March, 2014, he had received a signal from Kamiti prison where the appellant is imprisoned showing that indeed the appellant's appeal had been allowed in by the **High Court in Nairobi in Criminal Appeal No. 469 of 2006.**

Based on this information we directed the deputy registrar to avail the original file from the High Court in Nairobi in **Criminal Appeal No. 469 of 2006.** By a letter dated 22nd April, 2014, the Senior Principal Deputy Registrar at the Criminal Division of the High Court at Nairobi forwarded to this court the original file in **Criminal Appeal No. 469 of 2006.**

Upon perusal of the original records in **Nairobi High Court Criminal Appeal No. 469 of 2006** we came across a judgment delivered by Hon. Mr Justice J.B. Ojwang (then of the High Court) and Hon. Lady Justice Helen Omondi delivered on 22nd day October 2009. According to that judgment the appellant's appeal was allowed; his conviction in Thika Chief Magistrates Court Criminal Case No. 3652 of 2005 was quashed and the sentence set aside.

It is therefore apparent that the appeal against the decision of the chief magistrates court in Thika has been heard and determined and the appeal herein which is purported to have been filed against the same decision is an abuse of the process of the court. On 7th March, 2014 the appellant disowned the appeal and told the court that he does not know who filed it. Be that as it may and regardless of who filed it the appeal herein is an abuse of the process of the court and therefore it is hereby struck out.

Dated signed and delivered in open court this 16th May, 2014

H.I. Ong'udi

Ngaah Jairus

JUDGE

JUDGE