



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO. 249 OF 2011

*(An appeal from Judgment of Hon. L. N. Kiniale, District Magistrate II (Prof)
at Butere in Criminal Case No. 156 of 2011 dated 3rd November, 2011)*

HENRY MAKOTSI AYOTI APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

When this appeal came for hearing on 14th of October, 2013, Miss Opiyo, the learned Prosecuting Counsel informed the court that the appellant had served his two years imprisonment sentence and released on 23/12/2012. The appellant was therefore absent on the date of hearing the appeal.

Section 360 of the Criminal Procedure Code (Cap. 75) only recognizes abatement of appeals in cases of the death of an appellant. A mere release from prison, or completion of the prison term, or payment of a fine does not result in abatement of an appeal.

No hearing notice was issued by the Deputy Registrar for the appellant to attend the hearing of the appeal. He could not be expected to have known of the hearing date.

Consequently, I order as follows -

1. The Deputy Registrar will fix a fresh hearing date for this appeal.
2. The Deputy Registrar will issue a hearing notice to the appellant who appears from the charge sheet to come from Elubambo village, Shitati Sub-location, Butere District.

It is so ordered.

Dated and delivered at Kakamega this 22nd day of November, 2013

George Dulu

JUDGE