



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CRIMINAL APPEAL NO.57 OF 2002

(Consolidated with CRA NO. 73 of 2010)

(From original BGM CM NO.1817 of 1996)

(Formerly NRB HC CRA NO.1216 of 1996)

GABRIEL WEKOLA MAKOKHA & ANO.....APPELLANT

~VRS~

REPUBLIC.....RESPONDENT

JUDGMENT

The two Appellants Gabriel Wekola Makokha and Moses Wekesa Mahaka were convicted by Bungoma Senior Principal Magistrate of the offence of robbery with violence and sentenced to death in 1996. Each filed a separate appeal before Nairobi High Court. The appeals were transferred to Kakamega High Court through an order by Justice V. V. Patel dated 18/04/1997. The appeal was later transferred to Bungoma High Court in the year 2002. The appeals were consolidated to be heard together.

The Appellants have appeared before us two times for mention of the appeal. We directed the Deputy Registrar to search for the file in SPM Criminal Case No.1807 of 1995 for purposes of preparing for the hearing of the appeal. The Deputy Registrar filed a report in court which explained that the appeal has been mentioned in three High Courts namely Nairobi, Kakamega and Bungoma since 1996. Efforts made to trace the original file in the three stations did not bear fruit. The file could not be found in Bungoma Chief Magistrate's registry and archives.

The Appellants have appeared before other judges before us while pursuing their appeal. The two

Appellants have been keen to have the appeal heard. It is not possible to hear the appeal without the original court file although there are copies of typed proceedings before us. There is no evidence to prove that the two Appellants played any role in the disappearance of the court file. The appeal has been handled by three High Court stations and it is not possible to know which station is responsible for the loss of the court file.

The Appellants were charged with unbailable offences and were in prison remand from 30/11/1995 when they were charged. Judgment was delivered on 30/08/1996 whereas both Appellants were convicted. The appeal has been pending since 1996 when it was filed. The total period of incarceration is fifteen years. This is indeed a long time which has culminated in delay of justice and violation of the Appellants constitutional rights of freedom and expeditious disposal of their appeal.

It is our finding that the appeal before us cannot be heard and determined in the circumstances. The appeal is hereby held to have abated. The Appellants are hereby set at liberty unless otherwise lawfully held.

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D. A. ONYANCHA
JUDGE

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F. N. MUCHEMI
JUDGE

Judgment dated and delivered in open court in presence of the Appellants on the 31st day of May 2011.

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F. N. MUCHEMI
JUDGE