

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL APPEAL NO.348 OF 2010

REPUBLIC.....RESPONDENT

VERSUS

HARRISON MUIRURIAPPELLANT

DIRECTIONS

The affidavit sworn by Elizabeth Chepkoech Tanui, Resident Magistrate who was the trial magistrate demonstrates that there has been a concerted effort to frustrate the trial in this matter in order to defeat the ends of justice. According to averments in the affidavit, the lower court record first disappeared on the **30th June, 2008 at 2.30 p.m.** when the hearing before the court below was scheduled to continue. A skeleton file was reconstructed and all the prosecution witnesses recalled. The trial concluded on **23rd November, 2010** with the appellant being acquitted in count one but convicted in counts **2, 3, 4, 5, 6, 7 and 8.** He was sentenced to serve 3 years on each count – to run concurrently.

Following the events leading to the creation of the skeleton file, it had been ordered that the file be kept in the strong room throughout the trial. However, after the filing of this appeal by the appellant to challenge the conviction and the **3 year sentence**, the file has once again disappeared.

First Emukule, J ordered the DCIO, Nakuru to investigate the circumstances surrounding the disappearance of the file. The report by the DCIO found that **James Oscar Soi**, a Clerk in the Chief Magistrate’s Registry, being the last person to handle the file, was responsible for its disappearance. This finding is supported by another affidavit by **Esther Mirika**, the Executive Assistant in charge of the Chief Magistrate’s Criminal Registry.

Wendoh, J has also directed the registry to ensure that the file is traced. It is apparent from the efforts that have been employed that the file cannot be traced. However, before any decision can be made on the appeal and about **James Oscar Soi**, it is only fair and just that he be given an opportunity to explain his position. It is directed that:

- i) James Oscar Soi explains his role in the handling of the file in question (CM Criminal Case No.1042 of 2006 – R. V. Harrison Muiruri Kiragu). The explanation through the Chief Magistrate to be filed within two weeks from the date of this order, (and in any case, not later than 21st November, 2011).
- ii) Mr. Omutelelma, Senior Principal State Counsel to confirm whether the prosecution/police file is available and also if the witnesses are available.
- iii) Mention on 24th November, 2011
- iv) Production Order to issue.

Dated, Signed and Delivered at Nakuru this 27th day of October, 2011.

**W. OUKO
JUDGE**