



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Criminal Appeal 61, 62 & 56 of 2006**

COSMOS MUGAMBI..... 1ST APPELLANT
GILBERT KIRAITHE ASHFORD..... 2ND APPELLANT
DENNIS KIMATHI NJIRU 3RD APPELLANT

CRIMINAL APPEAL CASE NO. 61 OF 2006

COSMOS MUGAMBI APPELLANT

VERSUS

REPUBLIC PROSECUTOR

CONSOLIDATED WITH

CRIMINAL APPEAL CASE NO. 62 OF 2006

GILBERT KIRAITHE ASHFORD APPELLANT

VERSUS

REPUBLIC PROSECUTOR
CRIMINAL APPEAL CASE NO. 56 OF 2006

DENNIS KIMATHI NJIRU APPELLANT

VERSUS

REPUBLIC PROSECUTOR

RULING

The three appellants in this appeal were convicted for various offences in the lower court ranging from rape, contrary to section 140 of the Penal Code (now repealed) and with causing grievous harm contrary to S. 234 of the Penal Code. They were convicted and they preferred these appeals against their conviction and sentence. They were all granted bail pending appeal on 9th November 2006. On 15th October 2009, due to the constant absence of the appellants before court when their appeals were fixed for hearing, the court cancelled their bond and a warrant of arrest was issued. On 8th March 2010, the police arrested the first appellant, Cosmos Mugambi and the 2nd appellant, Gilbert Kiraithe Ashford. Todate, the third appellant, Dennis Kimathi Njiru is still at large. An application was made to reinstate bail in respect of 1st and 2nd appellants. Counsel for the appellants submitted that on the day their bond was cancelled, the appellants did not know that their appeal had been fixed for hearing because their advocate had been unsuccessful in contacting them on their mobile phones. The application for reinstatement was opposed by the learned state counsel. The learned state counsel submitted that the appellants had failed to attend court for hearing of their appeals severally. Indeed, I have gone through the proceedings and I have noted that the appellants failed to attend the hearing of their appeal severally. On 15th May 2008, only the 1st and the 3rd appellants were present before court. The 2nd

appellant did not attend. On 12th June, 10th July, 25th September 2008 and 15th October 2009 none of the appellants attended court for the hearing of their appeals. After a warrant of arrest was issued on 15th October 2009, the appellant's appeals were listed for mention on 18th and 26th January 2010. Again, there was no attendance for the appellants. Their advocate was in court on 15th October 2009 when their bond was canceled. Why did it have to wait for 1st and 2nd appellants to be arrested for them to be brought to court? As stated before, the first and 2nd appellants were arrested and brought before court on 8th March 2010. It is clear to the court that the appellants are not intent on abiding by the terms of their bail. It was submitted that the appeals should be separated to enable the appeals of 1st and 2nd appellant to be heard without waiting for the arrest of the 3rd appellant. I am not of the view that that could be the best course to take. The appellants were charged in the lower court with the offences that were of the same transaction. It is because of that that I am of the view that at this stage, it is not wise to order the hearing of the appeals to be done separately. However, if the third appellant eventually cannot be found, the appellants who are before court can renew that application. In this regard, I order the O.C.S. Ntumu to inform this court through the respondent the progress being made to arrest Dennis Kimathi Njiru. In the end, the court declines to reinstate the 1st and the 2nd appellants' bail because they failed to abide by its terms. This matter shall be mentioned on 29th November 2010 and the warrant of arrest against Dennis Kimathi Njiru is extended to that date.

Dated and delivered at Meru this 18th day of June 2010.

MARY KASANGO
JUDGE