

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 148 of 2003 & Misc. Cr. 8 of 2010

ROBERT TINGO MICHAEL..... APPELLANT

~VRS~

REPUBLIC.....RESPONDENT

RULING

The Appellant Robert Tingo Michael filed this appeal on 27/11/2003. Numerous applications have been filed by the Appellant asking the court to determine their fate under section 77 (1) of the Constitution of Kenya. This court has mentioned the appeal on several occasions. The Deputy Registrar has reported to us that all efforts to trace the lower court file have been fruitless with the latest written report dated 02/06/2010. In the absence of the relevant record, this appeal cannot be heard. There is no evidence to implicate the Appellants or any of them with any act leading to the disappearance of the lower court file. It is also our conviction that the Deputy Registrar has used due diligence to trace the record but efforts have not born fruit.

The fate of the Appellant who was condemned to death sentence has to be decided. Section 77 (1) of the Constitution calls for expeditious disposal of criminal cases. It reads:

“ If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

The appeals have been pending hearing for twelve (12) and seven (7) years respectively. The Constitutional rights of the accused persons for expeditious disposal of their criminal appeal have been violated and continue to be violated. It is not the fault of the court or the State that the record went missing. Neither is it the fault of the Appellants. All these parties would have wanted the appeal to be heard and determined expeditiously. For this reason, we take it as our duty to bring to an end this appeal in the interests of justice. The same cannot be held in abeyance forever.

It is our considered opinion that if the appeals are terminated, this would serve the interests of justice and give the Appellant an opportunity to participate in social – economic development for their own benefit and that of this nation. We hereby order that the appeal be and is hereby terminated. The convictions and death sentences imposed upon the Appellant is hereby set aside since there is no opportunity to test them on appeal. The Appellant is hereby set at liberty unless otherwise lawfully held.

.....
D. A. ONYANCHA
JUDGE

.....
F. N. MUCHEMI
JUDGE

Ruling dated and delivered on the 22nd day of July 2010 in the presence of the Appellants and the State Counsel Mrs letting.

.....
F. N. MUCHEMI
JUDGE