



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

CRIMINAL APPEAL NO. 14 OF 2003

BETWEEN
GODFREY AMBANI APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGEMENT

1. This matter has caused me a great deal of anxiety. I say so because I note that on 18.12.2009, the Appellant filed an Affidavit stating that he had been denied the right to a fair hearing and his Appeal which was filed on 21.1.2003 had never been finalized.

2. I took the initiative to try and trace the Appeal file and for strange reasons although in the court register, the Appeal existed, neither the physical file nor a record of the status of the Appeal was indicated. Worse of all, the lower court file was also unavailable. To compound an already bad situation, the learned Senior Principal State Counsel could not avail either his own record of the Appeal or the Police File!

3. On 15.7.2010, learned Senior Principal State Counsel sought a retrial and I gave him time upto 23.9.2010 to take instructions and on that day, he reapplied that the matter be retried.

4. I note that from his own submissions, the Appellant was sentenced to death for the offence of robbery with violence. He stated that he had been in custody since the year 2000. The circumstances of the offence are not known to me.

5. Should I order a retrial? That seems to be the fairest of orders to make in the circumstances and therefore I shall quash the Appellant's conviction, set aside the sentence imposed and order his retrial at Mumias SRM's Court and on a priority basis.

6. He shall be produced before the SRM Mumias on 7.10.2010.

7. Orders accordingly.

Delivered, Dated and Signed at Kakamega this 4th day of October, 2010.

ISAAC LENAOLA
J U D G E