

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 88'A' & 'B' of 2005

SAMWEL KIMANI KINYANJUI.....1ST APPELLANT

SAMWEL CHEGE MWANGI.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

This Ruling is made in H.C.CR. Appeal Nos. 88A and 88B which were consolidated and heard together on 3rd July, 2008. Learned Counsel Mr. Karanja appeared for the 1st appellant and indicated to the court that he could also represent the 2nd appellant. The 2nd appellant accepted Mr. Karanja's offer.

Whereas the appellants were both tried, convicted and sentenced on a combined charge of robbery with violence, the 2nd Appellant also faced a second count of rape, contrary to **Section 141** of the Penal Code, in respect of which he was also convicted and sentenced to 7 years imprisonment.

The State conceded to the appeal but only addressed itself to the robbery with violence charge. Submitting on behalf of the appellants, Learned Counsel Mr. Karanja did not also touch on the rape charge at all. The 2nd appellant did not submit on the same either and had nothing to add to what opposing counsel had submitted.

Upon reflection, we are of the view that the issue of the conviction and sentence for the offence of rape need to be addressed in the interest of justice, in order to avoid possible prejudice to the 2nd appellant who, prior to Mr. Karanja taking over the conduct of his appeal, had requested this court to allow him time to prepare himself. In the circumstances our judgment is deferred until such time as the 2nd appellant has had time to present further submissions as appropriate.

DATED and DELIVERED at Nakuru this 18th day of July, 2008.

D. K. MARAGA

JUDGE

M. G. MUGO

JUDGE