

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 101 of 2004

JEREMIAH MUGO NGIRI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being appeal against the conviction and judgment of the Principal Magistrate's Court Criminal Case No. 382 of 2003 at Kerugoya)

RULING

At the Kerugoya Magistrate's Court a new registry was constructed where all the criminal files were kept. In the year 2004 that registry was gutted down by fire thereby destroying all the criminal files in that court except those that were kept at the Magistrate's Chambers.

The Appellant herein was convicted of robbery with violence in February 2004. The original trial court file was destroyed in the afore stated fire. The appeal when it came for hearing State Counsel sought that the court do order the matter to go for retrial. He based his above argument on that the conviction was recent and the witnesses were available. It ought to be remembered that the original record is not available and the court has no way of knowing whether the trial had its own short comings. If indeed so the court in ordering retrial may well give prosecution an opportunity to mend that short coming. In the case of **PIUS MUKABE MULEWA & ANOTHER -V- REPUBLIC CRIM APP. NO. 103 of 2001** the Court of Appeal had to consider the appropriate orders that should be made where the court file of the trial court is irretrievably lost and found that:

".....that the court must try to hold the scales of justice and in doing so must consider all the circumstances under which the loss occurred. Who stands to gain from the loss?"

The fire cannot be blamed on the Appellant at all and accordingly I am of the view that it would be unjust to order retrial. I therefore do hereby set aside the Appellant's conviction at Kerugoya court and do hereby discharge the Appellant and do set him free unless otherwise lawfully held.

Dated and delivered at Nyeri this 20th day of July 2007.

MARY KASANGO

JUDGE