

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 375 OF 2001

FRANCIS KIBURI MUCHEKE.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(From conviction and sentence of G.K. Mutai D.M. I in Isiolo District Magistrate's Court Criminal Case No. 469 of 1997).

JUDGMENT OF COURT

The appellant was originally charged with the offence of desertion from the Force contrary to section 41(3) of the Police Act Cap 84 of the Laws of Kenya. He was convicted and sentenced to fine of Ksh.7,000/= or in default, 7 months imprisonment. He appealed against the conviction and sentence.

When the appeal came for a hearing the Attorney-General through the State Counsel, Mr. Muteti declined to support the conviction and thereby the sentences. He pointed out that no disciplinary action had been taken against the officer by the Officer – in – charge of the Station under which the appellant served. He also noted that during the trial very basic but vital witnesses were not called to testify to confirm that the appellant had been away without authority of anyone. This was important because the appellant's defence raised lawful excuses for his absence. Mr. Muteti also pointed out that evidence on record was conflicting and that there was evidence of appellants presence during the period of desertion thus negative the offence.

I have also read the evidence on the record against the appellant. I agree with M.Muteti that there was no adequate evidence upon which a conviction would have been based I accordingly quash the conviction and set aside the sentence. The appellant is hereby set at liberty forthwith unless held for any other lawful reason. It is so ordered.

Dated and delivered at Meru this 30thday of September 2004

D.A. ONYANCHA
JUDGE