

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. APPLICATION NO.411 OF 2001

ABDIRASAK ALI BUROW.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

I had certified on 15th March, 2000 that the intended appeal did not raise any question of law for proper determination by the court of appeal.

The present application by Mr. Khaminwa for the applicant is for setting aside the said order.

The application is opposed by Mr. H. Okumu, the Senior Principal State Counsel. I have considered the submissions advanced by both sides with utmost care.

I agree that Mr. Justice Githinji ordered on 18th May 1998, in the presence of Mr. Nyachoti for the appellant that the appeal be heard by two judges. At that time, it be noted that the appellant was against both the conviction and sentence.

Later when the appeal came up for hearing on 7th June, 1999 before me it was adjourned for hearing before me on 16th June, 1999. Mr. Nyachoti was present for the appellant when it was so adjourned. Although, not appearing on the record, I had adjourned until 16/6/99 Mr. Nyachoti wanted to speak to his client who was in prison then. When the appeal came up for hearing on the 16/6/99, Mr. Nyachoti for the appellant dropped the appeal against the conviction and urged me to reduced the sentence saying his client (the appellant) was full of remorse and he had learned his lesson.

From the above it is clear that Mr. Nyachoti had not raised any objection to the hearing of the appeal against the sentence by a single judge. If the appellant wanted to challenge the conviction, he would not have instructed Mr. Nyachoti to drop the appeal against it and expressed his remorse to him for committing the offence.

I have considered all the other submissions by Mr. Khaminwa, the learned advocate for the applicant and find no merits in them.

In result, I dismiss this application. Ruling delivered today on 3rd July, 2001 in the presence of Mr. Thiongo holding brief for Mr. Khaminwa for the appellant and Mr. Okumu, Senior Principal State Counsel for Republic.

DATED and DELIVERED at Nairobi this 3rd day of July, 2001.

V. V. PATEL

JUDGE

