



**Republic v Kirui & 2 others (Criminal Appeal E001, E004 & E005 of 2023 (Consolidated)) [2025] KEHC 3458 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3458 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL APPEAL E001, E004 & E005 OF 2023 (CONSOLIDATED)**

**WM MUSYOKA, J  
MARCH 21, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**PHILEMON KIRUI ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL NYAGA ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPHAT OJWEKE ..... 3<sup>RD</sup> RESPONDENT**

*(Appeals from acquittals in rulings by Hon. PA Olengo, Senior Principal Magistrate, SPM, in Busia CMCCRCs Nos. 1265, 1217 and 1266 of 2023, of 26th April 2021, 3rd May 2021 and 30th April 2021, respectively)*

**RULING**

1. These appeals were initiated by the State against acquittals of the 3 respondents. The 3 had been charged separately, and it would appear that their cases were consolidated. There is still confusion, though, as they appear to have been acquitted in separate rulings.
2. Directions were taken, for filing of written submissions, sometime in 2023, and the appellant indicates it filed its written submissions.
3. There has been considerable delay in moving the appeals, before the 3 were brought together. But as indicated above, there is still a puzzle on the nature of the proceedings conducted by the trial court, in terms of whether the trial court conducted 1 or separate trials.
4. I allocated a date for judgment on 31<sup>st</sup> May 2024, for 7<sup>th</sup> June 2024, but when I settled to write the judgement, I detected gaps, which I addressed in the ruling that I delivered on 7<sup>th</sup> June 2024. I allocated 18<sup>th</sup> October 2024, for judgement, but the judgement could still not be prepared, as the record of appeal



was not complete. On 4<sup>th</sup> December 2024, I was informed that the record of appeal was now proper, and I allocated 7<sup>th</sup> March 2025, as the date for judgement, which I then pushed to 14<sup>th</sup> March 2025, as I was not to sit on 7<sup>th</sup> March 2025, on account of official commitments elsewhere. I was not able to prepare the judgement by 14<sup>th</sup> March 2025, due to pressure of work, and I put off delivery of the judgement to 21<sup>st</sup> March 2025.

5. When I settled to write the judgement herein, for delivery on 21<sup>st</sup> March 2025, I established, from the record, that these proceedings have been conducted so far in the absence of the respondents. Mr. Okutta made 2 appearances and disappeared thereafter. I cannot tell, from the record, whether he had been served with notices for the subsequent appearances.
6. I have refrained from writing the judgement, to pave way for the correction of that anomaly. In another criminal appeal, by the State, the court proceeded to judgement, after it was informed, by the State that it had no contact with the respondents, and did not know their whereabouts. However, when the judgement came out favourable to the State, it moved out quickly to seek to apprehend the respondent, to have him apprehended for sentencing purposes. He is now in court seeking review or setting aside of that judgement. I would not like to go that way in this matter.
7. For abundance of caution, the respondents herein shall have to be served with the relevant papers, whether personally or through their Advocates, for the purposes of the hearing of the appeal. The State has a long hand, and should be able to find them, wherever they could be.
8. I shall allocate it a mention date. Let the respondents be served, by the State, with a notice of the mention date, and an affidavit of service shall be filed. The purpose of the mention shall be to determine whether the respondents shall be filing written submissions to the appeal, and to bring light into the proceedings, by clarifying the nature of the proceedings that the trial court conducted, as indicated above. Thereafter, I should allocate a date for judgement. Mention shall happen on 31<sup>st</sup> March 2025. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 21ST DAY OF MARCH 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the appellant.

Mr. Wycliffe Okutta, instructed by Ouma-Okutta & Associates, Advocates for the 2nd respondent.

