



**Republic v Aori & another (Criminal Appeal E023 of 2021)
[2023] KEHC 18604 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL APPEAL E023 OF 2021
WA OKWANY, J
JUNE 15, 2023**

BETWEEN

REPUBLIC APPELLANT

AND

YOAKIM MOSE AORI 1ST RESPONDENT

JOHN MOTURI KENGERE 2ND RESPONDENT

(Being an Appeal against the Judgment of Hon. M. C. Nyigei – PM Nyamira dated and delivered on the 2nd day of September 2021 in the original Nyamira Chief Magistrate’s Court Criminal Case No. 569 of 2017)

RULING

1. I have considered the rival submissions made by Mr. Morigori, Learned Counsel watching brief for the complainant and Mr. Chirchir, Learned Counsel for the State over the circumstances under which this appeal was withdrawn on 18th April 2023.
2. The instant appeal was filed by the State as against the Respondents who were the accused persons before the trial court.
3. When the matter came up for directions on 7th March 2023, Mr. Atisi, Advocate for the Respondents informed this court that he had not been served with the Record of Appeal thus prompting the court to order that the matter be mentioned on 18th April 2023.
4. A perusal of the court file reveals that on 18th April 2023, Counsel for the Prosecution, through a letter addressed to the Deputy Registrar, requested that the matter be placed before the said Deputy Registrar for its withdrawal.



5. I note that the appeal was thereafter withdrawn on 18th April 2023 at the instance of the office of the Director of Public Prosecutions who indicated that the State did not wish to proceed with the appeal.
6. I have perused the complaint letter, by Mr. Morigori, Counsel watching brief for the complainant, and his submissions before this court where he alleged that this file was on 18th April 2023 sneaked and placed before the Deputy Registrar. I find that in the face of a clear request by the ODPP to have the file placed before the Deputy Registrar on 18th April 2023 for the purposes of its withdrawal, the claim, by Mr. Morigori, that the file was sneaked to the Deputy Registrar is far from the truth. It was misleading for counsel to impute an improper motive on an officer of this court before first confirming the circumstances under which the withdrawal was done. I find that, in the circumstances of this case, the Deputy Registrar acted within his mandate and on a written request by the ODPP.
7. Be that as it may, and in view of the change of position by the ODPP, through Mr. Chirchir, who on 30th May 2023 requested for the rescission of the withdrawal of 18th April 2023, I hereby in exercise of this court's supervisory powers reinstate the appeal for hearing.
8. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS
15TH DAY OF JUNE 2023.**

W. A. OKWANY

JUDGE

