



**Muchera v Republic (Criminal Appeal 37 & 118 of 2019
(Consolidated)) [2023] KEHC 20604 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL 37 & 118 OF 2019 (CONSOLIDATED)**

WM MUSYOKA, J

JULY 21, 2023

BETWEEN

FRANCO MUCHIKA MUCHERA APPELLANT

AND

REPUBLIC RESPONDENT

**AS CONSOLIDATED WITH
CRIMINAL APPEAL 118 OF 2019**

BETWEEN

FRANCO MUCHIKA MUCHERA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from conviction and sentence by Hon. MI Shimenga, Resident
Magistrate, RM, in Butere SRMCCRC No. 356 of 2018, of 3rd April 2019)*

RULING

1. The appellant, Franco Muchika Muchera, had been convicted by the trial court in 2 separate cases, of assault and causing grievous harm on Metrine Maeyende, his lover/partner/wife/spouse. He was sentenced to imprisonment on both of them.
2. Directions were taken in Kakamega HCCRA No 118 of 2019, for disposal of the appeal in that cause. Directions are yet to be taken on the disposal of the appeal in Kakamega HCCRA No 37 of 2019, and a record of appeal is yet to be filed.



3. As I prepared to write judgment in Kakamega HCCRA No 118 of 2019, I stumbled on an affidavit in the record by Metrine Mayende, the complainant in both matters, sworn on June 4, 2020, where she essentially says that she has forgiven the appellant, and asking for his release to facilitate reconciliation.
4. I directed that the complainant be made available to confirm the contents of that affidavit. She was made available on October 13, 2022, and she said that she stood by the contents of that affidavit.
5. The respondent and the complainant appear to be at variance with regard to the way forward. The complainant would like the appeals to be allowed, so that the appellant is freed, while the respondent would like me to go ahead and determine the appeal on merits. The respondent went ahead and filed written submissions, asking me to dismiss the appeals.
6. The appellant and the complainant appear to be in a cohabitation, which they believe amounts to a marriage. They claim to have a child between them. They can be considered to be a family. If they are ready and willing to reconcile, the court should facilitate that, in the spirit of Article 159 of the Constitution.
7. I accordingly, therefore, to facilitate that reconciliation, allow the appeals herein. The convictions are quashed and the sentences set aside. The complainant should understand that once this is done, it cannot be undone, in the sense of the convictions and sentences being revived. Orders accordingly.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS
21st DAY OF JULY 2023**

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Khayumbi, instructed by JI Khayumbi & Company, Advocates for the appellant.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

