



**Kinyua v Republic (Criminal Appeal E163 of 2022)
[2024] KEHC 14747 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14747 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E163 OF 2022
LW GITARI, J
NOVEMBER 7, 2024**

BETWEEN

COSMAS MWENDA KINYUA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. It has come to my notice that the Appellant Cosmas Mwenda Kinyua was charged jointly with Martin Mwenda in the Senior Resident Magistrate’s Court at Nkubu with the offence of gang defilement. The two were convicted by the learned trial magistrate and sentenced to serve twenty five (25) years imprisonment.
2. They filed separate appeals. It has come to my attention that I heard and determined the appeal of one of them who is Martin Mwenda. I upheld the conviction and sentence of the learned trial magistrate. This appeal is by the co-accused of Martin Mwenda whose appeal I heard and determined.
3. It is my view that it would be prejudicial for me to hear this appeal as I have already made a determination in the matter. The present appeal would not have a fair trial as there is no way I can arrive at a different finding which I have already made. In the circumstances I disqualify myself from this appeal and order that for fairness the appeal should be heard by another Judge. I therefore order that the file be placed before the Presiding Judge Meru for re-allocation to another Judge.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF NOVEMBER 2024

L.W GITARI

JUDGE

