



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CRIMINAL APPEAL NO. 101 OF 2014**

*(From the Original Conviction in SRM's Court Kwale Criminal Case No. 114 of 2003)*

**MWINYI ABDALLA MWADOGO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The appellant was charged and convicted of robbery with violence in 2003. He was charged in case No.114 of 2003 in Kwale SRM's Court. He was sentenced to death.

During the robbery the Appellant used a knife to threaten but did not cause any injury.

2. He appealed his conviction and sentence vide HCCRA 101/2014, (this Appeal). However, the proceedings of the trial court have never been found, and the best effort to find the same have failed. This appeal has been mentioned several times to find out if the record have been found. It is clear that those records shall not be found any time soon. I have therefore decided to act on this matter by exercising my discretion according to the law.

3. The Appellant has been in jail for 18 years since 2003. He committed robbery with violence using a knife to threaten. Nobody was injured during the robbery. His appeal cannot proceed due to lost record. This is in itself an intrusion to free and fair trial. By the current jurisprudence the Appellant would serve a jail term of about 15 years if he were to be found guilty.

4. He has already served 18 years. I now herewith exercise my discretion to release the Appellant on account of time served of 18 years.

5. Accordingly, the Appellant is herewith set free, the life sentence lifted, and he is released from jail unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED IN MOMBASA THIS 7TH DAY OF JUNE, 2020.**

**E. K. O. OGOLA**

**JUDGE**

In the presence of:

Appellant in person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant