



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL NO. E031 OF 2021**

**SIMON GITIYE .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. When this matter was called out for directions after parties filed submissions, the appellant applied to court to allow him withdraw the appeal.
2. That request was opposed by the respondent prosecutor on the basis that it has resisted the appeal and filed a notice to enhance the sentence together with submissions thereof.
3. The court is therefore asked to determine whether the appellant as a convict serving a sentence can be denied the right to withdraw his appeal and thus compelled to proceed with the same against his wish and will.
4. I understand the law to be that even a criminal appeal like any other private litigation belongs to the party. Here the appeal belongs to the appellant as the convict and that the prosecution has filed a notice to enhance the sentence together with the submissions may not be a reason to force the litigation upon the appellant.
5. I see the right to withdraw any matter from court to be an integral part of the right to access justice and vested in the appellant. Once he decides to withdraw the appeal, nobody, not even the court, has the right to stand on his way and force him to pursue the same, provided the request is made before the judgment is delivered.
6. With such appreciation, I find that nothing would justify the court in denying the appellant his right to terminate the appeal by way of withdrawal. I thus accede to the request and mark this appeal as withdrawn.
7. Having been so withdrawn the fact that there exists in the file a notice to enhance the sentence, which remains a notice and not a cross appeal, the notice goes with the withdrawn appeal as it cannot stand on its own.
8. Let the file be closed.

**PATRICK J.O OTIENO**

**JUDGE**

**11/11/2021**