

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 151 OF 2013

BETWEEN

RASHID ANGONDE HASSAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The petition of appeal herein was lodged at the registry herein on 22nd July 2013, to appeal against a judgment delivered in Hamisi SPMCCRC No. 490 of 2011, wherein the appellant was convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code, Cap 63, Laws of Kenya. On the same day the Deputy Registrar wrote to the court at Hamisi calling for the original records of the trial court.

2. The application that I am called upon to consider is a Motion dated 25th September 2017. It seeks directions on the disposal of the appeal, and, upon the directions being given, that the appellant be acquitted or otherwise a retrial be ordered. It is averred in the affidavit in support that the records of the trial court had never been availed despite requests that they be made available. There is exhibited a letter from the Hamisi Law Courts dated 10th April 2017 stating that the original records could not be traced.

3. When the matter was placed before me on 26th September 2018 for directions counsel for the state, Mr. Juma, urged me to order a retrial if the original trial court file could not be traced. Mr. Fwaya for the appellant informed that court that he was open to whatever order the court was pleased to make in exercise of its discretion.

4. As the original court record cannot be traced, the appeal herein cannot be heard. In the circumstances, the order that I feel constrained to make is to order that the appellant herein be retried in proceedings to be conducted at the Hamisi Law Courts.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER 2018

W. MUSYOKA

JUDGE