

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL APPEAL NO. 95 OF 2015

REPUBLIC.....APPELLANT

VERSUS

JOHN WAMBUA MAKEWA.....RESPONDENT

RULING

This appeal came for hearing today, and the learned counsel for the Respondent, Mr. Fred Namisi, made an oral application that the appeal to be dismissed. In oral submissions made in court, Mr. Namisi stated that court orders are not made in vain, and are sacrosanct, and that it is up to the court to protect and defend its dignity in ensuring observance of court orders. Further, that this Court after several appearances by the parties gave the Appellant the last opportunity to file submissions on 13th July 2016.

However, that the Appellant has not defended its appeal, and the person who is suffering in this case is an innocent member of the public. Mr. Namisi explained that his client is suffering because as an ordained priest, he has been suspended from pastoral duties until this case is over, and the case has taken over 6 years, having been heard both in the lower courts and High Court.

Furthermore, that this appeal was filed on 20th June 2015, and that the Appellant is not serious about this appeal. In addition, that the Petition of Appeal filed on 24th June 2015 is appealing against a non-existent order, and alleging general grounds, and that is why the Appellant is finding it difficult to prosecute its appeal.

The learned Prosecution Counsel appearing for the Appellant, Ms. Rita Rono, made an oral application in Court to be indulged to make oral submissions after an adjournment of three hours. The learned counsel that the application should be granted in the interests of justice, as the Respondent was facing previous charges of attempted murder. In the alternative, that this Court relies on the Petition of Appeal and Record of Appeal, and delivers its judgment.

After hearing the parties, the following is the ruling of the Court.

This court on 13th July 2016 gave clear directions after several adjournments that the Appellant files and serve its written submissions on the appeal within 30 days, and upon default its appeal was liable to dismissal. There has been no compliance to date with these directions by the Appellant, and therefore this appeal is amenable to dismissal.

On the submission made by the Appellant that the court relies on the Petition of Appeal and Record of appeal and gives a judgment, it is not the duty of this court to prosecute the appeal on behalf of the Appellant, and the Appellant has to present the legal authorities and evidence that support the very general grounds they have raised in the Petition of Appeal filed herein on 24th June 2015, and lay a basis for the court to make its decision.

The duty of this court therefore is to deliver a judgment based on the law, evidence and arguments presented by the parties, and is not to embark on a fishing expedition of the law that may be applicable to the voluminous trial court record and the grounds in the Petition of appeal.

In the premises the appeal filed herein is hereby dismissed for non-compliance with the orders granted

herein on 13th July 2016, and for non-prosecution.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 1ST DAY OF DECEMBER 2016.

P. NYAMWEYA

JUDGE