

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 163 OF 2013

JOSEPH MULI..... 1ST APPELLANT

WALII WAMBUA..... 2ND APPELLANT

V E R S U S

REPUBLIC PROSECUTION

(from original conviction and sentence by P.M's court at Mwingi Cr. Case No. 60 of 2012)

R U L I N G

This is an application brought by the appellants by way of Notice of Motion dated 17th April 2015. The application is brought under Article 159 of the Constitution of Kenya. It seeks orders that the court be pleased to set aside, vacate and or reinstate the appeal for hearing. Secondly that any other order be made in favour of the appellants. The application was filed with an affidavit sworn on 17th April 2015 by Christopher Kyania Nzili Advocate for the appellants.

The application has grounds on the Notice of Motion. The grounds were that the appeal was marked as closed in the absence of the appellants after the appellants

had filed their written submissions but the state had not filed theirs. It was also a ground that counsel was not served with a hearing notice. It was also a ground that the mistakes of an advocate should not be visited upon the appellants.

When the application came up for hearing on 3rd June 2015 Mr. Nzili appeared for the appellants while Mr. Orwa appeared for the state. Mr. Nzili made submissions in support of the application. Mr. Orwa made submissions in opposition to the application.

Indeed this court marked the appeals as abandoned on 3rd of March 2015. The appeals were filed on 6th November 2013. The matter then came before this court a number of times. The lawyers of the appellants did not attend court on 6th November 2014, 18th December 2014 and on 3rd March 2015 when the appeals were marked as abandoned and the file closed.

Marking the appeals abandoned was not the same thing as dismissing the appeals. Now that the appellants have made an application for the reinstatement of the appeals, I find no reason to deny them the chance in the attempt to clear their criminal records. However I must warn counsel that the appeals should be fixed for hearing and heard in the course of this year 2015.

To conclude I hereby vacate the orders marking the appeals as abandoned. I reinstate the two appeals. They will be fixed for hearing in the course of this year.

Dated and delivered at Garissa this 2nd day of July 2015.

GEORGE DULU

JUDGE