



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 48 OF 2008

PETER AMARE 1ST APPELLANT

FRED MUKHONO MWASHI 2ND APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from original conviction and sentence in the Judgment of Hon. I. Maisiba (Resident Magistrate) in Eldoret Chief Magistrate's Court Criminal Case No. 262 of 2007)

RULING

I have carefully gone through the record of proceedings in this file. The same shows that after the sureties were approved the matter was fixed for mention on 23rd May, 2012. Both the Appellants and State failed to appear and a further mention date was fixed for 7th June, 2012.

On 7th June, 2012, both State and Appellants were also not in attendance. A further mention date was fixed for 4th October, 2012 and a mention Notice was issued to the State.

On 4th October, 2012, State Counsel, Mr. Kabaka was in attendance. Appellants were absent. Mr. Kabaka applied for summons to the sureties and warrants of arrest were issued against both Appellants.

Before I took over the conduct of this file on 20th June, 2013, there were two previous mentions on 7th December, 2012 and 18th April, 2013 respectively on which dates the Appellants were not in attendance.

On 20th June, 2013, I issued summons to DCIO, Eldoret to show cause why the OCS Soi Police Station had failed to come to court inspite of being summoned by court on 18th April, 2013. Neither DCIO nor OCS appeared in court on 3rd July, 2013 when I fixed the matter for mention. Court was informed that the OCS was on leave.

I placed the matter for mention on 4th July, 2013 and on this date Corporal Wanjohi in charge of crime office, Soi Police Station was in attendance. He informed court that he had visited an area called Cheiwe where both Appellants lived but was unable to trace them. He asked court to give him more time to try and locate the Appellants using the details and information contained in the original police file. Court granted this request and a further mention date was placed on 17th July, 2013. The Appellants appeared before me yesterday on 8th July, 2013. They claim that they did not know that they should have brought themselves to Court. I refuse to buy this explanation as it is clear that after their bonds were approved, they were given mention dates and they failed to honour

it. They therefore deliberately refused to come to court.

With regard to the 1st Appellant, Peter Amare, he was represented by Mr. Magare advocate. He has never bothered to visit him and inquire about the status of his file. And even if he has no counsel, prudence demands that he ought to have visited court and made inquiries on the status of his file. This applies to the 2nd Appellant. No summons is served to persons who are on bond. It is their initiative to come to court to find out the status of their files.

Therefore, the explanation given by both Appellants as to why they have not been attending court is not plausible. They never thought one day, the law would catch up with them.

A close scrutiny of the proceedings shows that on 6th August, 2008, the then Hon. Justice Ibrahim gave an order upon application by the Appellants to the effect that there be a stay of execution of sentence against the Accused persons, in Eldoret Chief Magistrate's Case No. 262 of 2007 – Republic -vs- Peter Amare and Fred Mukhono Mwashu, pending the determination of the appeal filed in the High Court, being Eldoret High Court Appeal No. 48 of 2008 – which is this appeal. They were in addition granted by the Judge, each a cash bail of 10,000/= or to execute a bond of similar amount with one surety of like amount. The Judge further directed that if the sureties in the trial court had not withdrawn, they would be released on the same bond terms as in the trial court.

Pursuant to the order of the Hon. Judge, both Appellants deposited surety bonds. They were never to be seen or heard since.

It is therefore clear that they absconded from proceedings in this court because, after all, their sentences had been stayed. That explains why, apart from absconding they have not taken any steps towards preparation of the record of appeal or better said, towards the disposal of this appeal.

In this regard, I hereby cancel their bonds and vacate the order of the court given by Hon. Justice Ibrahim dated 6th August, 2008 and issued on 18th August, 2008 staying their sentences. The effect of this will be that the sentences imposed by the trial court shall forthwith start running. The Deputy Registrar shall also forthwith facilitate preparation and forwarding to prison of the respective committal warrants. In computing the sentence, the days served by both Appellants prior to issuance of the order staying the sentences shall be taken into account.

It is so ordered.

DATED and DELIVERED at ELDORET this 9th day of July, 2013.

G. W. NGENYE – MACHARIA

JUDGE