



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(Coram: Madan, Law & Potter JJ A)**

**CRIMINAL APPLICATION NO. NAI 2 OF 1980**

**BETWEEN**

**JOHN MOSEE.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Application for leave to appeal against the order of Cotran J on 22nd October 1979 in Criminal Appeal No 812 of 1979)*

**JUDGMENT OF THE COURT**

The appellant was convicted in the Senior Resident Magistrate's Court of robbery, contrary to section 296(1) of the Penal Code. His appeal to the High Court was dismissed in the following two words, "Appeal dismissed". Nothing else appears in the record to show what transpired at the hearing of the appeal or the reasons for the decision.

As held in *Misana v The Republic* [1967] EA 334, there being no written record of the decision of the High Court nor any reason for the decision, the only proper course is to remit the matter to the High Court for the original appeal to be reheard. The court's opinion was expressed as follows (at page 336):

The appellant, on appeal to the High Court, is entitled to have all the evidence before the Resident Magistrate re-examined and evaluated by the High Court in order to determine whether there was evidence upon which the Resident Magistrate could properly make the finding which he did (see *Shantilal Maneklal Ruwala v R* [1957] EA 570). When this is done the appellant is also entitled to appeal to this Court on a matter of law from the decision of the High Court. Quite apart from the fact that on an appeal to the High Court from a Resident Magistrate, a written record should exist setting out the decision of the High Court. It is quite impossible for an appellant effectively to appeal to this Court on a matter of law unless this Court knows not only the decision of the High Court but, at least in broad outline, the reasons for that decision. In this case there is neither any written record of the decision of the High Court nor any reasons for that decision. It is clearly impossible for this Court, in the absence of such decision and reasons, to arrive at a decision whether, as a matter of law, the appellant had good grounds of appeal. In effect, therefore, the appellant has, by the action of Erokwu J, had been deprived of his statutory right appeal to this Court; and he has also been deprived of his right of knowing the reasons, however brief they may be, for the decision of the High Court on his appeal.

Accordingly, we remit the matter to the High Court for the original appeal to be reheard according to law.

*Order accordingly.*

**Dated and delivered at Kisumuthis 9th June 1980.**

**C.B MADAN**

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**JUDGE OF APPEAL**

**E.J.E LAW**

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**JUDGE OF APPEAL**

**K.D POTTER**

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**JUDGE OF APPEAL**

**I certify that this is a true copy of the original**

**DEPUTY REGISTRAR**