



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Wesonga & 2 others (Criminal Appeal E010 of 2021)  
[2025] KEHC 16743 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16743 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL APPEAL E010 OF 2021  
WM MUSYOKA, J  
NOVEMBER 14, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**GEORGE OCHIENG WESONGA ..... 1<sup>ST</sup> RESPONDENT**

**ENOS ODUOR WAMBAI ..... 2<sup>ND</sup> RESPONDENT**

**MELKIA OMOLLO WAMBAI ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal arising from the judgment of Hon. PA Olengo, Senior Principal Magistrate, SPM, delivered on 29th April 2021, in Busia CMCCRC No. 80D of 2018)*

**RULING**

1. I delivered a judgment herein, on 22<sup>nd</sup> October 2024, which allowed the appeal on Count II, with the consequence that the 2<sup>nd</sup> respondent was convicted. There was a further order that he be arrested for the purposes of sentencing.
2. That outcome prompted the filing of a summons, dated 6<sup>th</sup> February 2025, by the 2<sup>nd</sup> respondent, seeking revision of his conviction in that Judgment, and for stay of execution of the judgment of 22<sup>nd</sup> October 2024. He averred that he was never served with the appeal papers, hence he could not have participated in the proceedings.
3. The appellant filed an objection, on grounds that there was no procedure, for the court to do that which the 2<sup>nd</sup> respondent was proposing or asking the court to do.
4. I have reviewed the record. There was nothing to indicate that the appellant ever served the appeal on the respondents, to enable them participate in the appeal. I also note that the appellant has not filed an affidavit, to address that issue of service.



5. One of the cardinal constitutional principles, on hearing, including of appeals, stated in Article 50 of *the Constitution*, is the right of the person accused to be heard. Where the principle is breached, any proceedings, would not stand, by virtue of Article 2(4) of *the Constitution*. That should be the case herein, for the person who was not heard, because he was never served with the court process, would have been condemned unheard.
6. The determination of the appeal, without the respondents having been served, was an error which is curable, by the inherent power of the court, by way of the setting aside of the proceedings handled so far, inclusive of the judgment. Consequently, I do hereby vacate the proceedings conducted so far, and set aside the judgement of 22<sup>nd</sup> October 2024. The matter shall have to start de novo.
7. Let the appellant serve the appeal papers on all the respondents, and file an affidavit of service.
8. Regarding the application, dated 23<sup>rd</sup> June 2025, for the joinder of Peter Otieno Ogutu, who was the complainant at the trial court, the position is that in criminal cases, a complainant, at the trial, would essentially be represented by the prosecution. However, the law does allow victims of the alleged offence to intervene in proceedings, through their own Advocates, who may watch brief, cross-examine witnesses and file submissions, if need be.
9. That being the case, the applicant is effectively represented by the Director of Public Prosecutions, in these proceedings, but nothing stops him from filing written submissions, if need be, should the appeal be disposed of by that means.
10. The 2 pending applications are hereby disposed of in terms of paragraphs 6 and 9 of this ruling.
11. The matter shall be mentioned on 2<sup>nd</sup> December 2025, to confirm whether the respondents will have been served, and to give directions on the disposal of the appeal. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the appellant.

Mr. Makokha, instructed by JB Makokha & Company, Advocates for the 2<sup>nd</sup> respondent.

Mr. Maloba, instructed by Hammerton Maloba & Company, Advocates for Peter Otieno Ogutu.

