



**Wangwi v Republic (Criminal Appeal 114 of 2015)
[2022] KECA 1011 (KLR) (23 September 2022) (Judgment)**

Neutral citation: [2022] KECA 1011 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 114 OF 2015
PO KIAGE, M NGUGI & F TUIYOTT, JJA
SEPTEMBER 23, 2022**

BETWEEN

JOHN MOGESI WANGWI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court of Kenya at Migori (D.S. Majanja, J.) dated 22nd July, 2015 in Criminal Case No. 36 of 2014)

JUDGMENT

1. To consider the merit of the judgment giving rise to the conviction of John Mogesi Wangwi (the appellant) is to give credence to an audacious act of dishonesty on his part.
2. The appellant was arraigned before the Senior Principal Magistrate Court at Migori on the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*. The particulars were that on April 28, 2004, at Igesa sub-location within Kuria District of the then Nyanza Province, jointly with others not before court, he robbed Joseph Marwa Irigo cash Kshs. 1,700, two hens and a pair of slippers all valued at Kshs. 2,170 and at or immediately before or immediately after the robbery wounded the said Joseph Marwa Irigo.
3. The appellant was tried and convicted in a judgment read and delivered on May 3, 2005, and was sentenced to death. Dissatisfied with the conviction and sentence, he appealed against the judgment in Kisii High Court Criminal Appeal No. 89 of 2010. The appeal was heard by the High Court (Sitati , Lagat Korir JJ) and in a judgment delivered on February 13, 2013 dismissed for lack of merit. That decision has not been appealed against and is not the subject of this appeal.
4. Patently dishonestly, the appellant then preferred another appeal against the judgement of the trial court being Kisii High Court Criminal Appeal No. 94 of 2010 which was transferred to Migori High Court and assigned Criminal Appeal No. 36 of 2014. That dishonesty did not escape the vigilant eye



of Hon. Majanja, J and in a short four paragraph judgment delivered on July 22, 2015, the learned Judge held;

- “ 1. The appellant herein filed an appeal against a conviction and sentence for the offence of robbery with violence contrary to section 296(2) of the Penal Code (Chapter 63 of the Laws of Kenya). The particulars were that on April 20, 2004 at Igena Sub-location in Kuria District, jointly with others not before the court he robbed Joseph Marwa Tigo of cash Kshs. 1,700/- and a pair of slippers valued at Kshs. 2,170 and at or immediately before or immediately after the time of such robbery wound the said Joseph Marwa Tigo.
2. The appellant pleaded not guilty and after a trial, he was convicted and sentenced to death. On May 6, 2010, he lodged an appeal to the High Court at Kisii, High Court Criminal Appeal No. 89 of 2010. The appeal was heard and dismissed on February 13, 2013 by Sitati and Lagat-Korir JJ. He did not prefer a second appeal to the Court of Appeal.
3. At the time of filing the appeal, he also lodged another petition of appeal on May 14, 2010 against the same conviction and sentence. This court cannot entertain any further challenge to the subordinate court conviction and sentence once the appeal therefrom has been heard and determined. Since the court lacks jurisdiction to entertain this appeal, the only option is to strike it out.
4. The appeal is struck out.”
5. The pattern of dishonesty by the appellant is now with us. In the notice of appeal that gave rise to the appeal before us, the appellant purported to appeal against the decision in Migori Criminal Appeal No. 36 of 2014 but misleadingly attributes that decision to the High Court at Kisii (Hon. Sitati and Lagat-Korir JJ.). In his submissions to us, learned Counsel Mr. Ogeto for the appellant, is emphatic that the appeal is against the decision of Hon. Majanja J dated July 22, 2015 but makes no mention of the striking out order and proceeds to argue an appeal not against the striking out but the merit of the decision of the trial court. Such travesty!
6. The objective of this disingenuous attempt to mislead us is all too clear. The appellant simply did not appeal against the decision of the first appellate court which heard his appeal on merit. Instead, he chose to proceed with another appeal lodged before the High Court during the pendency of another appeal before the same court, which was correctly and promptly struck out by Hon. Majanja, J. Knowing full well that he could not fault the striking out decision, the appellant purported to come before us on an appeal questioning the merit of the decision of the trial court. The appellant would have been well aware that there was no proper appeal before us against the decision of Sitati and Lagat Korir JJ.
7. We need say no more. There is no proper appeal before us and the purported appeal is hereby struck out.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF SEPTEMBER, 2022.

P.O. KIAGE

.....

JUDGE OF APPEAL

MUMBI NGUGI



.....

JUDGE OF APPEAL

F. TUIYOTT

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

