



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, HANNAH OKWENGU &

J. MOHAMMED, J.J.A.)

CRIMINAL APPEAL NO. 77 OF 2015

BETWEEN

ERUPE LOKUTAN.....APPELLANT

AND

REPUBLICRESPONDENT

(Appeal from the judgment of the High Court of Kenya at Kitale, (Karanja, J.) dated 5th December, 2013

in

HCCRA NO. 108 OF 2011)

JUDGMENT OF THE COURT

[1] **Erupe Lokutan**, the appellant herein, was tried and convicted by the Magistrate’s Court at Lodwar for the offence of Robbery with Violence contrary to **section 296(2)** of the **Penal Code** and sentenced to death. He appealed to the High Court against his conviction and sentence. His appeal was heard and dismissed. He is now before us in a second appeal.

[2] Learned Prosecuting Counsel, **Ms Karanja**, has conceded the appeal on the ground that one of the judges who heard the appeal was a judge of the Environment and Land Court and therefore had no jurisdiction to hear the appeal. She urges the Court to order re-hearing of the appeal. **Mr. Bichange**, learned counsel who appeared for the appellant, objects to an order for re-hearing of the appeal. He urges the Court to acquit the appellant.

[3] We have considered this matter. In light of the Supreme Court decision in **Republic vs Karisa Chengo & 2 others**, it is evident that the hearing of the appellant’s appeal in the first appellate court was a nullity as the Bench was not properly constituted. In the circumstances, the judgment delivered by the High Court dismissing the appellant’s appeal was also a nullity.

[4] In effect what this means is that the appellant’s conviction and sentence by the magistrate’s court still stands. The issue of an acquittal cannot arise as the appellant’s appeal has not been properly heard.

[5] In the circumstances, the orders that commends itself to us is to allow this appeal to the extent of setting aside the proceedings and judgment of the 1st appellate court and direct that the appeal be re-heard before a competent Bench of the High Court and that the matter be given priority. Those shall be the orders of the Court.

DATED and Delivered at Eldoret this 15th January, 2019.

E. M. GITHINJI

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.