



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MUSINGA, GATEMBU & MURGOR, J.J.A.)

CRIMINAL APPEAL NO. 112 OF 2014

BETWEEN

ELPHAS ANGATIA KANGU APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the Judgment of the High Court of Kenya at Kakamega, (Lenaola, J.) dated 6th October, 2010

in

HCCRA NO. 123 OF 2010

JUDGMENT OF THE COURT

1. The appellant was convicted of incest and sentenced to life imprisonment. His first appeal against conviction and sentence was summarily rejected by **Lenaola, J.** under **section 352 (2)** of the **Criminal Procedure Code**.
2. The appellant faulted the High Court for the summary rejection of his appeal, arguing that he had advanced valid grounds of appeal. He added that his constitutional right to a fair trial as stipulated under **Article 50 (4)** of the **Constitution** had been violated.
3. **Mr. Ketoo**, Prosecution Counsel, for the respondent, conceded that the appellant ought to have been given an opportunity to pursue his appeal, moreso considering the sentence that had been handed down by the trial court.
4. **Section 352 (2)** of the **Criminal Procedure Code** states as follows:

“where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for

hearing, be summarily rejected by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground for complaint.”

5. Having looked at the memorandum of appeal that was filed by the appellant, we think that he ought to have been granted an opportunity to argue it before the High Court. Consequently, we allow this appeal against its summary rejection. We set aside the order made on 6th October, 2010 by Lenaola, J. and direct that the appeal be set down for hearing on its merit.

DATED and delivered at Kisumu this 29th day of July, 2016.

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCI Arb

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR