



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: OKWENGU, MAKHANDIA & SICHALE, J.J.A.)
CRIMINAL APPEAL NO. 337 OF 2010

BETWEEN

BENJAMIN MBITHI KAVEVA PPELLANT

AND

REPUBLIC RESPONDENT

(Being an appela from the judgment of the High Court of Kenya at Mombasa (Azangalala & Odero, JJ.) dated May, 2010

in

H.C.Cr.A. No.307 of 2006)

RULING OF THE COURT

This matter was before us today for learned counsel Mr Odhiambo to show cause as to why action should not be taken against him for failing to attend Court on 20th January 2014. Mr Odhiambo has now explained that he had to travel to Asembo in Siaya County to attend the funeral of his nephew's mother in law which took place on the 18th January 2014 and that he arrived back late on 20th January as they experienced difficulties whilst travelling back.

We appreciate the explanation and note that attending the funeral may be part of Mr Odhiambo's social responsibility. However that social responsibility cannot be undertaken at the expense of his legal and professional responsibility particularly in a situation where someone is in custody with his life hanging in the balance. We therefore wish to caution Mr Odhiambo that such an explanation will not be acceptable to the Court next time.

We note that the appellant has expressed a strong wish not to be represented by Mr Odhiambo. This is the second counsel allocated by the Court who is being rejected by the appellant. Although the appellant has a right to be allocated a counsel at the State's expense, the appellant cannot be allowed to pick and choose. It is evident that the appellant wants to be the one to advise counsel on what to do instead of him being the one to be advised. Since the appellant does not seem to respect the knowledge and ability of counsel allocated to him by the State, we shall adjourn this matter and give the appellant

the choice of identifying his own advocate at his own cost or undertaking his own appeal in person.

Mr Odhiambo is therefore released from this matter.

The matter will be listed in the May session and the appellant must either have properly instructed his own advocate by then or be ready to proceed in person.

Dated and delivered at Mombasa this 10th day of February, 2014.

H. M. OKWENGU

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR