



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
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AT NYERI
(CORAM: OMOLO, O’KUBASU & WAKI, JJ.A

Criminal Appeal 156 of 2004

BETWEEN

SIMON LOKWACHARIA APPELLANT

AND

REPUBLIC RESPONDENT

**(An appeal from a Judgment of the High Court of Kenya
(Juma & Mitey, JJ) dated 2nd
May, 2002**

in

H.C. Cr. A. Nos. 166 & 167 of 2000

JUDGMENT OF THE COURT

This is an appeal from the purported judgment of the superior court (Juma and Mitey, JJ) dated 2nd May 2002. When the appeal came up for hearing on 25th October, 2005, Mr. Ng'ang'a the learned counsel for the appellant, Simon Lokwacharia, addressed the Court on his grounds of appeal. The learned Principal State Counsel made his submissions but towards the end of his submissions, the Court drew his attention to the fact that the judgment of the High Court had not been signed by one of the two Judges of the superior court who heard the appeal. Pursuant to that revelation Mr. Orinda asked this Court to order for the rehearing of the appeal in the superior court.

It is unfortunate that the issue of the High Court judgment not having been signed was brought to the attention of the Court after the appellant’s counsel and the learned Principal State Counsel had completed their submissions. **Section 169(1)** of the Criminal Procedure Code (Cap 75 Laws of Kenya) provides:-

“Every such judgment shall, except as otherwise expressly provided by this Code, be written

by or under the direction of the presiding officer of the court in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.” (emphasis provided)

The judgment of the High Court appealed from was dated but not signed by one of the two Judges of the High Court. That means there was no valid judgment of the superior court before us. We are therefore, precluded from considering the merits or demerits of the said judgment of the superior court. That being the position we order that the appellant’s appeal to this Court be and is hereby allowed and we further order and direct that the appellant’s appeal to the High Court be heard de novo before a different bench of two Judges of that court.

Dated and delivered at Nyeri this 28th day of October, 2005

R.S.C. OMOLO

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E.O. O’KUBASU

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JUDGE OF APPEAL

P.N. WAKI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.