

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL DIVISION

CRIMINAL REVISION NO. E004 OF 2020

REPUBLIC.....APPLICANT

VERSUS

NASRA HASSAN.....RESPONDENT

R U L I N G

1. The Applicant/state through a letter dated 1/12/2020 appeared that Shanzu SPMC CR. Case No. 274 of 2020 be called pursuant to Section 362 and 364 (1) (b) of the Criminal Procedure Code for purposes of revising order made on 15th day of October 2020 by Hon. D. Odhiambo Resident Magistrate erroneously under Section 210 of the Criminal Procedure Code acquitting the Respondent and yet the Section is only applicable when prosecution witnesses have testified and the state has closed its case.
2. It was the applicant's position that the trial Magistrate acted in haste and in disregard to the tenets of fairness and justice as the prosecution had not delayed the case nor did the court give indication that the reasons for grant of adjournment were inadequate.
3. In consideration of the wrong application of Section 210 Criminal Procedure Code which is applicable where the court determination whether the prosecution's evidence has established a prima facie case or not, I do find that the trial Magistrate erred. For failure of witnesses to attend the trial Magistrate ought to have acquitted the Respondent under Section 202 Criminal Procedure Code.
4. The orders made on 15th October 2020 are hereby revised. The trial in Shanzu CMC CR. Case No. 274 of 2020 is hereby reinstated. The Chief Magistrate (HOS) to assign the matter to another Magistrate for hearing and determination.
5. A copy of the ruling to be supplied to Hon. D. Odhiambo RM.

Dated, signed and delivered at Mombasa this 11th day of February, 2021.

HON. LADY JUSTICE A. ONG'INJO

JUDGE