

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

REVISION NO. E009/2021

(From the Original Conviction and Sentence in Kwale Criminal Case No. 1 of 2021 formerly Msambweni MCCR/E083/2021)

DIRECTOR PUBLIC PROSECUTIONS.....APPLICANT

VERSUS

1. PATRICIA NJIRA NYAWA

2. CHRISTINE MWENDE.....RESPONDENTS

RULING ON REVISION

1. From the letter addressed to me by **Hon. S. A. Ogot (SPM)** dated 17/3/2021, the background to this revision is as follows:

2. Hon. Ogot serves as the only sitting magistrate at Msambweni Law Courts and also as the Head of Station. Normally when she is away, pleas for Msambweni Law Courts are registered at Msambweni Law Courts but handled at Kwale Law Courts and returned back to Msambweni station for further action.

3. On 3rd March, 2021 Hon. Ogot was away on compassionate leave and this matter was registered at Msambweni station for plea taking. Accordingly, the same went to Kwale Law Courts for taking of plea. At Kwale Law Courts, the file was registered a fresh with a new case number from Kwale Law Courts despite it already being registered at Msambweni Law Courts. The court that handled the matter, Court 2, took plea from the two accused persons. Accused one pleaded guilty and the court requested for a presentence report with a further mention of 9th March, 2021 issued. Accused two pleaded not guilty and the court issued bond terms and placed it for hearing before Court 3.

4. When the matter went to Court 3 for surety hearing, the State Counsel noted that the same was a matter from Msambweni Law Courts and that they had no jurisdiction to deal with it. The court agreed with those sentiments and on 16th March, 2021 it issued order for the file to be transferred back to Msambweni Law Courts and the same listed for directions on the 17th March, 2021.

5. **Hon. Ogot** has now written to me seeking my directions on how the matter should progress. Is it a Msambweni Law Courts file or a Kwale Law Courts file as both courts have it registered in their systems? Further, Accused One has been convicted but is yet to be sentenced and was released into the custody of her father while Accused Two is remanded in custody.

6. From the foregoing it is my finding that this is a matter that I have the jurisdiction to revise so as to ensure the ends of justice. Accordingly, and pursuant to the review jurisdiction of this Court I make the following orders:

(i) This matter shall be tried and determined in Msambweni Law Courts which has the territorial jurisdiction in the matter.

(ii) The matter shall be tried afresh, and both accused persons shall be recalled to plead afresh to the charges.

(iii) **Hon. Ogot (SPM)** the Head of Station, to investigate with the help of the prosecutor, the circumstances under which the matter was registered as a Kwale Court matter.

(iv) The report to be sent to me before 30/4/2021.

Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 22ND DAY OF MARCH, 2021.

E. K. O. OGOLA

JUDGE