



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**CRIMINAL REVISION CASE NO. 254 OF 2018**

NICHOLAS MUTAI MWENDWA.....1<sup>ST</sup> APPLICANT

GABRIEL KIMANZI MUNYAO.....2<sup>ND</sup> APPLICANT

STEPHEN MUTHANGYA.....3<sup>RD</sup> APPLICANT

SOLOMON MUTHUI MUNYAMBU.....4<sup>TH</sup> APPLICANT

STEPHEN MUTHAMI KILONZO.....5<sup>TH</sup> APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**R U L I N G**

1. This file has been placed before me for purposes of revision pursuant to **Section 362** of the **Criminal Procedure Code**. From the content of the letter dated **20<sup>th</sup> February, 2019** by **Hon. G. W. Kirugumi, Senior Resident Magistrate, Mwingi Law Courts**, she heard the case and at the point of delivering Judgment an error occurred in that **Stephen Muthami Kilonzo** who was convicted was released while **Stephen Muthangya Mutua** who was acquitted stood convicted. According to her the conviction and acquittal were proper save for reference to the Accused persons.

2. When the error was pointed out to the learned trial Magistrate she extended bail to both Accused persons until further orders by this Court.

3. I am therefore called upon to examine the record for purposes of satisfying myself as to the correctness, propriety and regularity of the proceedings.

4. After the Judgment was delivered the record reads thus:

*“... State Counsel – No previous records.*

***Mitigation***

*I am the sole bread winner. My father does not work. My mother has no job. I married recently. My wife depends on me. She delivered not long ago. My family will suffer. I also pay school fees.*

***3<sup>rd</sup> Accused mitigation***

*I am the sole bread winner. My father is not able to support us. I have never been convicted of a crime.*

***Court – Social inquiry report.***

***Mention on 5/11/18 for sentencing.”***

What is not clear is who addressed the Court in mitigation for purposes of informing itself as to what sentence to pass. It is worth noting that after mitigation the Court requested for a social inquiry report. Therefore no sentence had been meted out.

5. The error alluded to by the learned Magistrate arose out of an omission that could have been corrected by the Court after it was pointed out by the learned defence Counsel **Mr. Nzili** and the learned State Counsel **Mr. Maina**. What happened was not inconsistent with substantial justice.

6. In the premises, I set aside the proceedings of the **24<sup>th</sup> October, 2018** and the subsequent orders apart from the Judgment and direct that the file shall be placed before the **Hon. Kirugumi** for rectification of the errors in reference to the Accused persons and for the retaking of pre-sentence address (mitigation) by the Accused persons that she convicted prior to sentencing them.

7. It is so ordered.

**Dated, Signed and Delivered at Kitui this 26<sup>th</sup> day of February, 2019.**

**L. N. MUTENDE**

**JUDGE**