



**REPUBLIC OF KENYA**

**AT THE HIGH COURT IN MILIMANI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 499 OF 2016**

**HARRISON KAGURA MURUGU.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The trial court file being Chief Magistrate's Criminal Case No. 1198 of 2013 Republic -V- Harrison Kagura Murugu was forwarded to this court by Hon. R. A. Oganyo (Mrs) Chief Magistrate, City Court with a request to this court to revise her order dated 15<sup>th</sup> November, 2017. Save to state that this court should exercise its powers under Section 363(2) of the Criminal Procedure Code, the background warranting the revision was not given. The court proceedings were also not typed for ease of reference.

2. A look at the proceedings of the day read as follows:

***“Court: Proceedings not typed.***

***Prosecutor: I pray for copies of the same and also pray for further mention date.***

***Accused: My advocate lost his mother. They are burying her today.***

***Order: Further mention on the 16<sup>th</sup> January 2018. This file will be placed before the judge for consideration under Section 363(2) of the Criminal Procedure Code”.***

3. A look at the above clearly shows that there is nothing arising from the proceedings of 15/11/2017 that required revision. However, a look at the previous proceedings of 21/9/2017 refer to a ruling of 23/11/2015, and confirmed on 17/10/2016 which the Hon. Magistrate wished be subjected to revision. Luckily, the proceedings culminating in this ruling that were recorded by a different magistrate are typed.

4. The contestation therein was about the production as evidence of a copy of cheque drawn by ICEA Lion General Insurance Company by PW2. The cheque was in favour of C.F.C Stanbic Bank. PW2 was a credit officer dealing with systems at CFC Bank. The defence objected to the production of a copy of the cheque because the cheque was secondary evidence and had not indicated the designation of the person certifying and had signed it.

5. In her ruling, Hon. T. Murigi, CM stated that :

***“I have considered the defence objection and the response thereto by the prosecution and I find that it will prejudice the prosecution to have the document signed by the person certifying the same”.***

6. The above ruling, by grave error, did not indicate whether or not the witness, PW2, was to proceed to adduce MFI as P. Exhibit 1. No other witness thereafter testified as at 31/08/2018. In my view then, the ruling was tainted with an irregularity because after observing that the production of the copy of the cheque would not be done by the person who certified it, the court ought to have proceeded to rule whether PW2 would adduce the copy of the cheque in evidence or not. The failure to do so meant that the prosecution was left in doubt as who ought to have produced the cheque. Although the implied effect of the order was to have the witness produce the copy of the cheque, the learned magistrate fell short of expressly stating so. Accordingly, the order of the court was irregular and created more confusion to the trial than before it was made. That is demonstrated by the subsequent request by the parties to the succeeding magistrates to give directions on the production of the cheque.

7. Under Section 362 of the Criminal Procedure Code, the High Court in exercising its revisionary powers is called upon to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

8. As noted, the ruling of the learned trial magistrate, Hon. T. Murigi occasioned an irregularity which calls upon this court to exercise its supervisory jurisdiction in revising.

9. In the end, I set aside the ruling of the learned trial magistrate, Hon. T. Murigi dated 23/11/2015 and substitute it with an order that the current Trial Magistrate seized of the trial shall write a fresh ruling premised on the submissions made by the parties on the issue at hand. The Trial Magistrate must indicate in the ruling as to the admissibility of MFI-I by PW2.

10. It is so ordered.

**Dated and Delivered at Nairobi This 30<sup>th</sup> March, 2019.**

**G.W.NGENYE-MACHARIA**

**JUDGE**