



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.138 OF 2012

JOAB ONYANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant was the complainant in **Kibera CM Criminal Case No.867 of 2012** where the accused, James Kamau Ndungu had been charged for **assaulting him and causing him actual bodily harm** contrary to **Section 251** of the **Penal Code**. The accused pleaded not guilty to the charge and was released on bail pending trial. The case was listed several times for hearing. Unfortunately, the prosecution did not produce any witnesses before court. There is evidence that the complainant failed to attend court on more than one occasion, and on each occasion the prosecution informed the court that it did not have the police file. On 15<sup>th</sup> May 2012, the prosecution applied to adjourn the case. The application for adjournment was disallowed. The prosecutor then told the court that the prosecution was offering no evidence in support of the charge. The accused was acquitted under **Section 210** of the **Criminal Procedure Code**. The trial court held that the accused had no case to answer.

It is this Ruling that provoked the Applicant to make the application for revision dated 24<sup>th</sup> May 2012. The complainant states that he did not deliberately fail to attend court on the appointed date because he was issued with a police bond that required him to attend court on 17<sup>th</sup> May 2012 rather than 15<sup>th</sup> May 2012. He urged the court to set aside the order acquitting the accused and instead make an order directing that the trial proceeds to hearing and conclusion on its merit. During the hearing of the application, Mr. Mwalo for the Applicant reiterated the Applicant's sentiments. Ms. Aluda for the State opposed the application. She submitted that the Applicant not only failed to attend court on the particular day, but had failed to attend court on previous occasions necessitating the court to give the decision that is being sought to be challenged.

This court has considered the rival arguments made by the parties to this application. This court formed the opinion that it would serve no useful purpose for this court to reopen the case. The Applicant failed to attend court on several occasions. It is trite that where a complainant in a criminal case has an interest in the case, he must follow up the goings on in court so that he cannot later complain that he was not notified to attend court when adverse orders are made as a result of his failure to attend court. In the present application, whereas it may be true that the Applicant's failure to attend court was explainable on the last occasion when the accused was acquitted, that fact did not exonerate the complainant for his failure to attend on the previous occasions when he was required to attend court as a witness.

For the above reasons, this application lacks merit and is hereby dismissed.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2018**

**L. KIMARU**

**JUDGE**