



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 43 OF 2016**

**MULATYA MUNYOKI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(2) For the purposes of this section—*

*(a) the expression “judicial proceeding” shall be deemed to include any proceeding in which evidence is taken by a person authorized by law to take that evidence on oath; and*

*(b) a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused.”*

9. This is a matter where witnesses called by the Prosecution in a Criminal Case testified against an Accused, the Appellant herein. They identified exhibits that were subsequently adduced in evidence by the Prosecution in Judicial Proceedings where the Appellant was found guilty and convicted. It has been demonstrated that some of the exhibits were disposed off following the Court order. The retrial in the instant matter was ordered after the trial was declared a nullity following non-compliance with **Section 200** of the **Criminal Procedure Code** by the trial Magistrate.

10. It is alleged by the Appellant that invocation of **Section 34** of the **Evidence Act** in the circumstances is a violation of his rights. The law provides for admissibility of evidence adduced by a witness in proceedings previously in subsequent proceedings or at a later stage in circumstances set out in **Section 34** of the **Evidence Act**. The facts in issue to be proved is by exhibits that were disposed off following a Court order. Witnesses who identified them were cross-examined by the Appellant and will be availed for further cross examination. Production of part of evidence adduced which will be subjected to thorough cross examination will not be prejudicial to the Appellant; in the circumstance his rights shall not be deemed to have been violated.

11. In the result, the Appeal lacks merit and is dismissed in its entirety.

12. Therefore I do direct that this file be placed before the **Hon. M. Murage** Chief Magistrate for further hearing and disposal on a priority basis.

13. It is so ordered.

**Dated, Signed and Delivered at Kitui this 24<sup>th</sup> day of May, 2018.**

**L. N. MUTENDE**

**JUDGE**