



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 136 OF 2016**

**[From the original order of acquittal in Criminal Case No. 37 of 2013 in the Chief Magistrate Court at Embu, R. v. Mary Njeri Mohammed]**

**MOHAMMED ALI ABDALLA.....APPLICANT**

**VERSUS**

**MARY NJERI MOHAMMED.....RESPONDENT**

**RULING AND ORDER**

1. Today the matter was for delivery of the judgement in revision in the instant revisional proceedings.
2. Counsel for the respondent informed the court that her client is now deceased. And for that reason, the judgement in revision cannot be delivered. The reason being that courts do not grant orders in vain. Mr. Kamunya for the applicant submitted that the court ought to make a decision in the matter, while Ms Mati left the matter for the court to decide.
3. In reaching the decision in this matter, I am guided by section 360 of the Criminal Procedure Code (Cap 75) Laws of Kenya, which provides for abatement of appeals where the appellant has died during the pendency of an appeal. In the instant revisional proceedings, there is no specific provision that provides for abatement of the revisional proceedings wherein the order of acquittal is being challenged.
4. Furthermore, I am guided in this matter by section 361 (7) of the Criminal Procedure Code which treats revisional proceedings as appellate proceedings.
5. In the circumstances, I find that it is necessary to have recourse to the inherent powers of this court to direct that the instant revisional proceedings are hereby marked as having abated.
6. Furthermore, I recommend that section 360 of the Criminal Procedure Code should be amended by way of expansion to provide for explicit abatement of revisional proceedings wherein one of the parties dies during the pendency of the revisional proceedings.

Ruling delivered in open court at Embu this 24<sup>th</sup> day of October, 2017 in the presence of Mr. Kamunya for the applicant, Ms Ndorongo for the respondent and Ms Mati for the DPP.

**J. M. Bwonwonga**

**Judge**

**24/10/2017**