



**REPUBLIC OF KENYA**

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

**REVISION CASE NO. 2 OF 2016**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**LEONARD RABACH .....RESPONDENT**

**RULING ON REVISION**

The court has perused the proceedings in the lower court file No. 2730/15 criminal case

**Republic Versus Leonard Rabach.** The court has equally perused the letter dated 28/7/2016 by the Kenya medical Laboratory Technicians and Technology Board seeking revision herein.

It appears from the proceedings that by its letter dated 8<sup>th</sup> January 2016 the office of the Director of Public Prosecution decided to terminate proceedings against the accused under the provisions of section 87(a) of the Criminal Procedure Code. The trial court on the other hand decided to terminate the proceedings under the provision of Section 210 of the Criminal Procedure Code.

The said section 210 provides as follows:-

***“If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.”***

The above portion of the law presupposes that an actual trial ought to have taken place. Section 87(a) grants the prosecution the liberty to terminate charges against an accused person with a rider that charges could still be preferred against him thereafter in the event that evidence shall require so.

The matter which was presented to the trial court did not proceed to any hearing at all. There seemed to have been some oral submission by the prosecution as well as the defence counsel. The trial court despite the prosecution insisting that they wished to terminate the charges under the provisions of Section 87(a) of the Criminal Procedure Code, proceeded to terminate the suit under the provisions of section 210 of the Criminal Procedure Code.

In my respectful view this was wrong. No witness had ever testified. It even appears that there were some civil proceedings elsewhere.

However so as not to prejudice any of the parties position in this matter I find that my comments should stop at that. In exercise of the provisions of Section 362 and 364 of the Criminal Procedure Code I do order that the trial court's finding of 2/2/2016 are hereby set aside. The matter be remitted to the chief magistrate for direction on which magistrate to hear and determine the same other than Honourable P. BIWOTT.

The parties shall be at liberty to make before the said court further application or submissions if any.

Its so ordered.

**Dated this 10<sup>th</sup> day of August 2016.**

**H.K. CHEMITEI**

**JUDGE**