



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.147 OF 2016

(An Application for Revision arising out of the decision of E. MICHIEKA –SRM delivered on 15th

April 2016 in Kikuyu PMC CR. Case No.197 of 2015

(Republic –Vs- Samuel Karanja Rurigi)

REPUBLIC.....APPLICANT

VERSUS

SAMUEL KARANJO RURIGI.....RESPONDENT

RULING

The prosecution was aggrieved by the decision of the trial court in acquitting the accused (the Respondent) under **Section 202** of the **Criminal Procedure Code**. The prosecution has invoked this court’s jurisdiction under **Section 362** and **364** of the **Criminal Procedure Code** seeking to have the verdict reversed. The prosecution argues that the trial magistrate erred when he acquitted the accused under **Section 202** of the **Criminal Procedure Code** allegedly on account of the absence of the complainant. The prosecution explained that it was not aware that the case had been scheduled on the day that the order of acquittal was made. If it was made aware, it would have availed the prosecution witnesses. The prosecution was aggrieved that the trial magistrate had not taken into account the antecedents of the case before reaching the verdict that it is seeking to impeach. In particular, the prosecution complained that the trial magistrate did not take into consideration the fact that on several occasions prior to the order of acquittal, the accused had sought, and was granted several adjournments for one reason or the other. It was of the view that the accused sought the said adjournments for the sole purpose of frustrating and derailing the hearing of the case.

This court has considered the application by the prosecution seeking to revise the decision of the trial magistrate. **Section 364(1)(b)** of the **Criminal Procedure Code** provides thus:

“In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may –

(a)...

(b) In case of any other order other than an order of acquittal, alter and reverse the order.”
(Underlining mine)

Section 364(4) emphasizes that:

“Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.”

It is clear from the foregoing provision that the order craved for by the prosecution cannot be granted in an application for revision under **Section 362** and **364** of the **Criminal Procedure Code**. This court has no powers to set aside an order of acquittal in an application for revision. The only remedy available to the prosecution is to appeal against that decision. The application for revision therefore lacks merit and is hereby dismissed.

DATED AT NAIROBI THIS 3RD DAY OF AUGUST 2016

L. KIMARU

JUDGE