



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**REVISION No. 43 OF 2016**

**REPUBLIC .....RESPONDENT**

**VERSUS**

**ROBERT CHERUIYOT ..... 1<sup>ST</sup> APPLICANT**

**JUDITH ACHIENG NYAGOL ..... 2<sup>ND</sup> APPLICANT**

*(Revision from the Ruling issued by the Chief Magistrate's Court at Nakuru, Hon. Liza Gicheha – Senior Principal Magistrate on 15<sup>th</sup> September, 2016 on Anti Corruption Case No. 5 of 2015)*

**RULING**

By way of their letter dated 7<sup>th</sup> October 2016 the Office of the Director of Public Prosecutions asks that the High Court invoke its supervisory powers under Section 36 of the Criminal Procedure Code in respect of the Proceedings in Nakuru **ACC No. 5/2015, REPUBLIC Vs ROBERT CHERUIYOT and JUDITH ACHIENG NYAGOL.**

In that case, the two accused persons faced various charges under the Anti-corruption and Economic Crimes Act, 2013. After calling twelve (12) witnesses the prosecution closed its case on 3/8/2016. By a ruling delivered on 15/9/2016 the learned trial magistrate acquitted the 2<sup>nd</sup> accused **JUDITH NYAGOL** under Section 210 of the Criminal Procedure Code. The 1<sup>st</sup> accused **ROBERT CHERUIYOT** was however placed on his defence.

The office of the Director of Public Prosecution have indicated an intention to appeal the court's decision to acquit the 2<sup>nd</sup> accused and are aggrieved by the decision of the trial magistrate not to give reasons in her ruling for her acquittal of the 2<sup>nd</sup> accused person. They seek to have the trial stayed pending the hearing and determination of such appeal.

The Director of Public Prosecution is quite within this right to appeal the court's decision to acquit the 2<sup>nd</sup> accused. However I find no justification in staying the proceedings to await the outcome of such appeal.

The trial magistrate clearly stated that the reasons for such acquittal would be included in the final judgment. The learned trial magistrate is not obliged to give reasons for her acquittal at this stage. To give reasons at this stage may prejudice the remaining proceedings. The Director of Public Prosecution may await the delivery of the final judgment and depending on the outcome of the case against the 1<sup>st</sup> accused my then determine how they wish to proceed. I see no prejudice to any party in directing that the trial proceed to its logical conclusion. I therefore decline to grant a stay as prayed and I direct that the trial magistrate include the reasons for the acquittal of the 2<sup>nd</sup> accused in her final judgment.

It is so ordered.

**Dated in Nakuru this 24<sup>th</sup> day of October, 2016.**

**M. Otero**

**Judge**