REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.40 OF 2015

JOHN KAMAU GITHINJI……..APPLICANT

VERSUS

REPUBLIC……....RESPONDENT

RULING

The Applicant, Paul Irungu Maina is a complainant in a criminal case pending before the Makadara Chief Magistrate's Court. The particular case is **Criminal Case No.4017 of 2010 Republic –vs- Paul Irungu Maina and Daniel Onyango Obara**. The Applicant was aggrieved by the decision of the trial court to close the prosecution's case before the document examiner and the investigating officer had been given a chance to testify. During the hearing of the application, it emerged that it was the prosecution that had closed the case without consulting the complainant. Later, after the complainant had escalated the complaint regarding the conduct of the case with the Director of Public Prosecutions, the prosecutor in the case made an about-turn and made an application to reopen the prosecution's case so as to enable the two witnesses to testify. The application was argued before the trial magistrate (Hon. E. Nyongesa – SRM). A ruling in respect of the application was not made because the magistrate's court file was called to this court when the Applicant moved this court in the present application seeking to revise the same order of the trial magistrate.

It appeared to this court that at the time the prosecution closed its case, the prosecutor in the case and the complainant were not working in tandem. However, after intervention by the appropriate office, it is apparent that the said prosecutor and the complainant are now working in harmony. I agree with counsel for the accused persons in the criminal case before the trial court that the trial magistrate should be given an opportunity to, first, render a decision whether or not he will allow the prosecution to reopen its case to enable the two witnesses testify before this court can invoke its revisionary jurisdiction under **Sections 362** and **364** of the **Criminal Procedure Code**.

In the premises therefore, the criminal file in respect **of Makadara Chief Magistrate's Court Criminal Case No.4017 of 2010 Republic –vs- Paul Irungu & Another** is remitted back to the said court for the trial court to render its decision on the application that had been lodged by the prosecution to reopen the prosecution's case to enable the two witnesses testify. Any aggrieved party shall be at liberty to take any appropriate step that he deems necessary in the circumstances. It is so ordered.

DATED AT NAIROBI THIS 30TH DAY OF OCTOBER 2015

L. KIMARU

JUDGE