

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL APPEAL NO. 9 OF 2015

BETWEEN

REPUBLIC APPELLANT

AND

DOREEN ATIENO NYAMUYO 1ST RESPONDENT

ERICK OWINO OUMA 2ND RESPONDENT

JARED OWINO 3RD RESPONDENT

(Being an appeal from the original order of Hon. B. O. Omwansa, Ag. PM in Ndhiwa Senior Resident Magistrates Court Criminal Case No. 478 of 2014 dated 22nd January 2015)

JUDGMENT

1. **DOREEN ATIENO NYAMUNYO, ERIC OWINO OUMA and JARED OWINO** faced a charge of conspiracy to defeat justice and interference with witnesses contrary to **section 117(b)** of the *Penal Code (Chapter 63 of the Laws of Kenya)* in the subordinate court. They pleaded not guilty to the charge and after several false starts the matter was scheduled for hearing on 22nd January 2015 but when it was called out for hearing the prosecution applied for an adjournment.
2. The respondents opposed the adjournment and in a considered ruling, the adjournment was rejected and the accused were acquitted under **section 202** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*. The State appealed against the acquittal on the basis that the section under which the respondents were acquitted was not applicable.
3. At the hearing of the appeal, counsel for the respondents, Mr Odero, informed the court that they concede the appeal and do not object to a retrial.
4. In the circumstances and having satisfied myself that there is merit in the appeal, I hereby quash the orders issued on 22nd January 2015 acquitting the respondents. I direct the respondents to be retried and the retrial shall take no more than **three (3) months** from **1st January 2016**.
5. As the 2nd and 3rd respondents are on bond, they shall so remain throughout the trial. The 1st appellant shall execute a personal bond of Kshs. 50,000/- and provide one surety of Kshs. 50,000/-.
6. The respondents shall appear before the Senior Resident Magistrates Court, Ndhiwa on **5th January 2016** for mention and for further orders regarding their trial.

DATED and DELIVERED at HOMA BAY this 9th December 2015.

D.S. MAJANJA

JUDGE

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the appellant.

Mr Nyakwana instructed by E. Odero and Company Advocates for the respondents.