



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO.1 OF 2014**

REPUBLIC.....APPLICANT

VERSUS

MARGARET MWENDE.....1<sup>ST</sup> RESPONDENT

JOSEPH KIVUVE NZOKA.....2<sup>ND</sup> RESPONDENT

**RULING**

The learned state counsel asked this court through a letter dated 14<sup>th</sup> January 2014 to review the judgment of the learned trial magistrate on the following grounds:

- a. The lower court made a finding that the prosecution evidence was cogent only to turn around without citing any reasons to find that there exists inconsistencies and/or doubts in the evidence.
- b. The accused cannot be said to be the rightful owners of the seeds after the observation in (a) above, in light of the express provisions of Cap 326.
- c. The learned magistrate totally disregarded evidence of PW1 and PW2 who gave expert evidence on matters in issue.
- d. The learned magistrate's orders to have the "exhibits released to the rightful owners" is incorrect, illegal and improper as it flies in the face of the provisions of sections 3(b), (c) and Regulations 15, 16, 17 and 22 of Cap 326 regarding the procedure where such seeds are recovered.

The Respondents had been charged with the 1<sup>st</sup> count of selling uncertified seeds of plants contrary to section 3(1) (b), (c) and (d) and (4) of the Seeds and Plants Varieties Act Cap 326 and three counts of offering for sale an assortment of seeds in contravention of the provisions of Cap 326. They were tried and found not guilty. It is against this judgment that this review is sought.

Section 364 (5) of the Criminal Procedure Code states as follows:

**“When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the insistence of the party who could have appealed.”**

The Applicant was a party to the trial in the lower court. The lower court took down evidence and considered the same before making final findings. He acquitted the respondents. The grounds in support of this revision are grounds that can be relied on in an appeal. There is a judgement on record and whatever errors the trial magistrate is accused of having made are errors that are appealable.

In my considered view, therefore, this matter does not fall under the purview of revision. This matter offends the provisions of section 364 (5) of the Criminal Procedure Code. It is dismissed forthwith. I make orders accordingly.

**Dated, signed and delivered this 25<sup>th</sup> March 2014.**

**S.N.MUTUKU**

**JUDGE**