

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. 25 OF 2014

JUBILEE STEEL & HARDWARE APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

A Judgment was delivered by Honourable Ekhubi Resident Magistrate Criminal case Number 3112 of 2011 on 16th January, 2013. Orders were made directing the Accused to demolish a portion of her structure encroaching on a road reserve leading to plot number 2449/VI/MN situated at Changamwe. The demolition was to be done under the supervision of a Registered Surveyor.

The matter later went before Honourable Gachie Resident Magistrate for compliance proceedings. In his ruling dated 16th January, 2013 he found that there was compliance with orders of the Court and closed the case.

It is the applicants contention that the magistrate relied on a false affidavit sworn by the Mombasa County control officer on 5th March, 2014.

A perusal of the typed proceedings before the Court. The magistrate did rely on a letter dated January, 2013 addressed to the Court to the effect that the Accused person had removed the structure portion blocking entrance to a neighbouring plot. He found that there was corroboration by the provincial surveyor. He did not agree with the surveyors report filed by the prosecution and he gave his reasons.

Presently, the author of the compliance report has filed an affidavit dated the 5th day of March, in which he alleges to have been misled while compiling the compliance report.

I find that this is a matter that should be dealt with by way of an appeal rather than a revision.

Ruling read and delivered dated this **29th** day of **May, 2014**.

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M. MU YA

JUDGE

29TH MAY, 2014

In the presence of:-

Mr. were for the applicant

Kiprop for the State