



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISCELLANEOUS CASE NO. 50 OF 2014**

BONVENTURE ARADI .....APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

**RULING**

The Notice of Motion application dated 9th June, 2014 and which is expressed to be brought under Section 131 of the criminal Procedure Code seeks orders for the reversal and or setting aside of the orders issued by the Honourable Chief Magistrate in Mombasa Criminal Case number 3900 of 2008 on 5th June, 2014.

The grounds are that the orders made by the magistrate were irregular and unprocedural as he never accorded the applicant the opportunity to show cause.

I have called for and perused the record of the lower Court and in particular the proceedings of 23rd May, 2014. It is noted that the Accused was present and represented by Ratemo Advocate who informed the Court that the Accused was attending psychiatric treatment and was suffering from chronic depression.

It was argued that his absence was caused by his medical condition. The surety also testified and intimated that the Accused had not informed him that he was suffering from mental illness. The surety was discharged and the Court reserved its ruling which it delivered on 5th June, 2014.

I am satisfied that the Accused was accorded a fair hearing.

Section 362 of the Criminal Procedure Code donates power to the High Court to call for records and provides,

***“The High Court may call for and examine the record of any Criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, Sentence or order recorded or passed and as to the regularity if any proceedings of any such subordinate Court”.***

Upon perusal of the records in the lower Court I find no irregularity and or illegality occasioned so as to persuade this Court to invoke its powers of revision. The application has no merit and its dismissed. The file to be returned to the trial magistrate immediately as it has a mention date for today.

**Ruing delivered, dated and signed in open Court this 19th day of June, 2014.**

.....

**M. MUYA**

**JUDGE**

**19TH JUNE, 2014**

***In the presence of:-***

The Court clerk

Absence of the Advocate.