



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 4 OF 2013**

**REPUBLIC**

**VERSUS**

**MICHAEL MWAURA MBUU ..... APPLICANT**

**RULING ON REVISION**

1. Vide letter dated 231/2013, the Director of Public Prosecutions through the prosecution counsel, **Mukofu Naylor** appealed to this court to invoke **section 362** and **section 364** of the **Criminal Procedure Code** and revise the orders made on 15/1/2013 by **Hon. E. Too RM** in **CMCr. 2404/2011**.
2. I have perused the said record of the lower court and note that on the date complained about, there was no prosecutor in court by 10.20 a.m. The prosecution was allowed their last adjournment in the previous court session. On the date complained about, the trial magistrate stated *inter-alia*, as follows:-

**“Court orders are not made in vain and therefore in the absence of the prosecutor in court, I close the prosecution case.”**

3. **Section 362** and **section 364** generally give the High Court the powers of revision.
4. In a criminal trial, the prosecutor should be in court. In this case, at 10.20 a.m. there was no prosecutor in court and in the absence of any explanation, the trial magistrate deemed the prosecution case as closed. No court should be held at ransom by the prosecution. As stated in **Hosea Waweru & 2 Others –vs- Republic (2012) e KLR:-**

**“The court before which any case is being hard has the right authority and obligation to control the proceedings before it.”**

5. There is therefore nothing in this matter to be revised. Consequently, I dismiss the application for revision.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 16<sup>th</sup> day of June 2014.**

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**B. THURANIRA JADEN**

**JUDGE**