



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL REVISION NO. 16 OF 2013**

MARTIN WANG'OMBE WERU

LEONARD KAMANWA NGANGA

ERNEST IGOMA WAITHERA

MORRIS MWITI MUSYOKA

DENNIS MWAURA KIBUNYA

DOUGLAS NJOROGE KAMAU

GEOFFREY MUNGAI KAMUNGURIA

ROBERT NDUNGU CHEGE ..... APPLICANTS

VERSUS

REPUBLIC ..... RESPONDENT

*(From original conviction and sentence in Criminal Misc Case No. 21 of 2013 in the Chief Magistrate's Court at Kikuyu – A.W. Mwangi (Ag SPM) on 3<sup>rd</sup> April 2013)*

**RULING**

The applicants, Martin Wang'ombe and others were presented before the magistrate's court at Kikuyu and ordered to execute bonds to keep peace following allegations presented by way of affidavit by acting Inspector Eganza Dewy Linyerera of Kikuyu police station.

On allegedly agreeing to execute bonds, each was ordered to execute a bond of Ksh. 30,000/- with a surety of a like sum. Those able were also ordered to pay cash bail of Ksh. 30,000/- They were aggrieved by these orders and by a letter dated 27<sup>th</sup> March 2013, this matter was brought before this court.

I have gone through the record before me. The learned trial magistrate did not follow the procedure laid down in Sections 43 – 54 of the Criminal Procedure Code. After being informed by Inspector Eganza of the need for the applicants to execute the bond, the learned trial magistrate was mandated to conduct an inquiry to confirm the veracity or otherwise of the information. This she did not do.

An inquiry of this nature I believe entails the taking of some evidence and since it is supposed to take the form of a trial in criminal proceedings, the applicants were supposed to defend themselves. As it is, the record is silent on those steps and the logical conclusion is that they were not given an opportunity to defend themselves before the orders were made.

The learned counsel for the applicants has cited the case for **Mwagona and 3 others –Vs – Republic** (1990) KLR 1. I subscribe to the judgment of Githinji J (as he then was) in which the learned judge set out the steps to be taken in such cases. As this was not done in the present case, the proceedings were a nullity.

Having found so, the same are hereby set aside in their entirety. If any of the applicants paid cash bail, the same shall be refunded to them.

Orders accordingly.

**Dated and delivered at Nairobi this 11th day of July 2013**

**A. MBOGHOLI MSAGHA**

**JUDGE**