



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT MACHAKOS**

**Criminal Revision 4 of 2012**

**PETER KAVEMBA MWONGA ..... ACCUSED**

**VERSUS**

**REPUBLIC ..... PROSECUTOR/ RESPONDENT**

**RULING**

This is a request for revision made by letter dated 25<sup>th</sup> May 2012 by Onesmus Githinji & Company Advocates on behalf of **PETER KAVEMBA MWONGA**. It relates to **KILUNGU PRINCIPAL MAGISTRATE’S CRIMINAL CASE NO. 166 OF 2011 – Republic –vs- Peter Kavemba Mwonga**. Similar situations also arose in **Kilungu Principal Magistrate’s Criminal Case No. 15 of 2012 - Republic -vs- Alex Wambua Mwololo** and **Criminal Case No. 16 of 2012 – Republic –vs- Boniface Muthiani Mutisya and Nicholas Musyoka Kiendi**.

In all cases, the accused were charged with operating un-environmental impact project without a licence contrary to section 138 (a) as read with section 146 (1) of the Environmental Management and Coordination Act No. 8 of 1999. The particulars given in the charges were on operation of a lorry for ferrying sand.

In criminal case No. 166 of 2011 the accused was convicted, and subsequent orders made.

The State Counsel Mr Mwenda, has conceded that the charges do not exist. The facts or particulars do not disclose an offence. He stated that in Criminal Case Nos. 15 and 16 of 2012, the DPP directed the prosecutor to withdraw the charges. However, the learned magistrate declined the request for withdrawal of the cases. The State Counsel stated that review was justified.

I have perused the subordinate court files. The accused were charged with a non-existent offence. I am satisfied that this is a case fit for exercise of the revision powers of this court under section 362 of the Criminal Procedure Code (Cap 75 Laws of Kenya). The police seem to be abusing their powers.

Consequently, all the charges filed before the subordinate court at Kilungu Principal Magistrate’s Court Criminal Case No. 166 of 2011, 15 of 2012, and 16 of 2012 are hereby quashed. The proceedings and decisions of the learned magistrate in all the three cases are quashed. If any of the accused was convicted, the conviction is quashed and sentence set aside. Any orders made by the learned magistrate against any of the accused are set aside and any fine or security paid or made is discharged, and should be refunded to the respective accused forthwith.

Dated and delivered at Machakos this 27<sup>th</sup> day of **September** 2012.

**George Dulu**

**Judge**

**In presence of:-**

Mr Kamanda Holding brief for Mr Musyoka for Applicant

Mr Mwenda for State

Court clerk: Nyalo