



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**CRIMINAL REVISION NO. 2 OF 2011**

**JACKSON MUMBWANI )**

**PETER JUMA ) ::::::::::: APPLICANTS**

**VERSUS**

**REPUBLIC ::::::::::: RESPONDENT**

**(from the orders of B.Ombewa RM in Webuye SRMC CR Case No.1181 of 2010)**

**R U L I N G**

In Webuye Senior Resident Magistrate's Court Criminal Case No.1181 Jackson Mumbwani and Peter Juma Simiyu were jointly charged with the offence of Stealing Stock contrary to section 278 of the Penal Code.

During the taking of the plea on 18.8.2010 both accused pleaded guilty by stating – “It is true”. When the facts were read by the prosecution, however, the 2<sup>nd</sup> accused responded by saying that the cow stated to be stolen, was sold to him by the first accused and that he did not know at the time that the cow was stolen. The trial court then rightly entered a plea of “Not guilty” against him and pended the case for full trial for the 2<sup>nd</sup> accused while meting sentence to the 1<sup>st</sup> accused of five years.

This court is however now informed through a letter written by the Resident Magistrate of Webuye Law Courts Mr Boaz .M. Ombewa, that a serious mistake was on the same date made when preparing and signing committal warrants. That instead of the 1<sup>st</sup> accused Jackson Mumbwani, being committed to serve his sentence of five years, the 2<sup>nd</sup> accused, Peter Juma, was actually mistakenly committed to serve the five years in prison. The 1<sup>st</sup> accused, on the other hand, is presumed to be the innocent party and is attending mentions in court, pending the trial.

The abovementioned mistake is a serious mistake and should not have been committed. It requires to be corrected without delay as an innocent person is undergoing a punishment which until now he, does not deserve. I accordingly make the following orders.

**ORDERS**

1. Jackson Mumbwani alias Muungu be and is hereby ordered arrested by the OCS Webuye Police Station and produced before Webuye Senior Resident Magistrate's Court for proper committal to serve his sentence of five (5) years.
2. Peter Juma to be immediately released on bond of Kshs.50,000/- with a surety of similar amount pending his trial, with a requirement that he appears for mention before the trial court every 30 days with effect from 1.3.2011.

Dated at Bungoma this 21<sup>st</sup> day of February, 2011.

**D.A. ONYANCHA**  
**JUDGE**