



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL MISCELLANEOUS APPLICATION NO. 2 OF 2011**

- 1. WICKLIFE OTIENO NGODE Alias TOTI**  
**2. TOBIAS ODHIAMBO OTIENO ..... APPLICANTS**

**=VERSUS=**

**REPUBLIC ..... RESPONDENT**

**RULING**

The two (2) applicants had filed their identical applications filed in court on 11<sup>th</sup> January 2011 by which they sought orders barring the continuance of their trial in Cr. 2414/2010 on a charge of Robbery with Violence before the Chief Magistrate in Mombasa. They submit that their trial amounts to double jeopardy as they had already been charged with the same offence in Cr. 2515/2009. Mr. Onserio for the State submitted that there was no double jeopardy because in the first trial Cr. 2515/2009 the charge was terminated by way of a '*Nolle prosequi*'. As such he argues there was no bar to a subsequent charge.

I have myself obtained and perused the two files in question. It is correct that on 3<sup>rd</sup> August 2010 the State entered a '*Nolle prosequi*' dated 2<sup>nd</sup> August 2010 and signed by Mr. Ondari, Assistant Deputy Public Prosecutor. The effect of a '*nolle prosequi*' is not an acquittal. It is merely a termination of the charges which an accused person faced. A nolle is not a bar to future prosecution over the same incident. This is what in fact happened in Cr. 2414/2010. The two accused were re-arrested and charged. There is no illegality here. I find no merit in this application and I decline to issue orders staying the trial in the lower court. It is ordered that Crim. 2414/2010 proceed to its logical conclusion.

**Dated and Delivered at Mombasa this 12<sup>th</sup> day of July 2011.**

**M. ODERO**  
**JUDGE**

In the presence of:  
Both in person  
Mr. Onserio for State