

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

REVISION NO. 389 OF 2011

CHARLES OWANGA OLUOCH.....
.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

This file was placed before me on 4th October 2011 for directions on the way forward.

I have read the entire record of proceedings before the Hon. C. A. Otieno, R. M. who received and took evidence from 10 witnesses, before she disqualified herself as a result of conduct which she described unbecoming on the part of counsel for the accused. The matter was consequently assigned to Hon. H. O. Barasa who ordered that the case do start afresh or "**de novo**" in the estoric Latin.

The case was consequently referred to the Hon. W. Juma, the Chief Magistrate, where the prosecution informed her that it would have difficulties in re-calling their witnesses if the case were to commence afresh. As the lower court has no jurisdiction to revise its own orders, the learned Chief Magistrate referred this matter to this court for directions whether to confirm or revise that order.

The power of revision of orders made by the lower court are conferred to this court by Section 362 of the Criminal Procedure Code, (*Cap. 75, Laws of Kenya*). Under Section 364 of the said Code whenever any record of proceedings in the subordinate court has either been called for, or has been reported, or otherwise comes to the knowledge of the court, this court may, *inter alia*, except in the case of an acquittal, alter or reverse the order of the subordinate court.

This is a prosecution under the Sexual Offences Act, 2006 (*No. 3 of 2006*), and involves two (2) minors (*the victim, and the friend - both classmates*) who have both testified. Apart from the delay in finalizing the case it would be subjecting them, and in particular the victim, to further unnecessary trauma. The trauma may not be the same to the accused but he too would wish to have the case heard and determined, and clear his name if the court were to find no evidence to support the charges against him.

In the circumstances even though he was within his discretion under Section 200(3) of the Criminal Procedure Code to order that the case do commence afresh, it would not only be in the interest of expeditious dispensation of justice, but also in the interest of both the victim, the accused, and the Republic (*the people*) that the order of the learned Resident Magistrate, the Hon. H. O. Barasa, to commence the hearing of the case **de novo** be reversed.

In exercise therefore of the discretion conferred upon this court by Section 364 (1)(b) of the Criminal Procedure Code, I direct that the hearing of Nakuru C.M. Criminal Case No. 137 of 2009 do proceed from where the Hon. C. A. Otieno learned Resident Magistrate left upon disqualifying herself.

It is so ordered.

Dated, delivered and signed at Nakuru this 7th day of October 2011

M. J. ANYARA EMUKULE

JUDGE