

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL REVISION NO. 1 OF 2011

WILSON KIMOTHO MAINA GITHAE.....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

(Arising from Nyeri Chief Magistrate's Court Criminal Cases Nos. 868 of 2010 and 191 of 2010)

RULING ON REVISION

Wilson Kimotho Maina Githae hereinafter referred to as the Applicant, was tried on charge of seven (7) counts before the Chief Magistrate's Court, Nyeri, vide **Nyeri C.M.C.Cr. Case No. 191 of 2010**. In counts I and II the Applicant was accused of forgery contrary to *Section 345* as read with *Section 249* of the Penal Code. In counts III and IV, the Applicant faced a charge of making false document contrary to *Section 347 (d) (i)* as read with *Section 349* of the Penal code. In Count V the Applicant was accused of conspiracy to defraud contrary to *Section 317* of the Penal Code and in count VI he was accused of uttering a false document contrary to *Section 353* of the Penal Code. In count VII, the Applicant was accused of obtaining registration by false pretences contrary to *Section 320* of the Penal Code. The record shows that the case proceeded for hearing before Honourable Ole Keiwua, learned Senior Resident Magistrate. The Deputy Public Prosecutor entered a *nolle prosequi* on 31st August 2010. The Applicant was consequently discharged. He was soon thereafter arraigned afresh before the Chief Magistrate's Court vide **Nyeri C.M.C. Cr. Case No. 868 of 2010** with similar charges. The Applicant, through his Advocate, complained to Chief Magistrate. The Deputy Registrar was then prompted to place the two files before this Court for perusal.

In exercise of my supervisory power under *Article 165 (6)* of the Constitution and *Section 362* of the Criminal Procedure Code, I carefully perused the proceedings of the subordinate Court. It is apparent from the record that the Director of Public Prosecutions terminated the case against the Applicant after the prosecution had closed its case. Upon the determination of the case, the Applicant was ordered discharged. He was thereafter charged afresh before the Chief Magistrate's Court. It is clear from the record that the case against the Applicant was terminated after the prosecution had closed its case. Under *Article 157 (7)* of the Constitution, the Applicant was entitled to an acquittal. The learned Senior Resident Magistrate fell into error when he failed to apply the provisions of *Article 157 (7)* of the Constitution. I am convinced that the error can be corrected by this Court in exercise of its supervisory power of revision. I hereby set aside the order discharging the Applicant and substitute it with an order acquitting the Applicant of all the charges in **Nyeri C.M.C. Criminal Case No. 191 of 2010**. This Court in the circumstances, must also make a determination on the fate of **Nyeri C.M.C. Criminal Case No. 868 of 2010**. It is trite law that the principle of double jeopardy does not permit the state to subject the Applicant who has now been acquitted to a second trial for the same offence. Therefore **Nyeri C.M.C. Cr. Case No. 868 of 2010** must be declared to be null and void which I hereby do. The aforesaid case is quashed, the Applicant acquitted and set free forthwith.

Dated and delivered at Nyeri this 6th day of October 2011.

J. K. SERGON

JUDGE

In open court in the presence of Kimani for Applicant and Maundu for the State.