



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 312 of 2009

PETER KIRAGU GITHAIGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

PETER KIRAGU GITHAIGA is charged before the Chief Magistrate's Court at Nakuru with the offence of corruption contrary to Section 39(3)(a) as read with Section 48(1)(a) of the Anti Corruption and Economic Crimes Act No. 3 of 2003. In the cause of the hearing of the case before Mr. J.G. Kingori, SPM, an issue arose as to the admissibility of certain documents. Instead of ruling on that issue, the learned magistrate instead ruled that the appellant had a case to answer. On the error being pointed out to him the learned trial magistrate purported to review his own order and set it aside. This appeal is against that order.

Mr. Mugambi for the state readily conceded the appeal on the ground that the trial magistrate had no powers to review his own order. He urged me to review it myself and send the matter back to the same court to complete the hearing.

Mr. Murimi for the appellant opposed the plea for revision arguing that this is not an appeal by the state and this court cannot therefore grant it. The trial magistrate having ruled that the accused had a case to answer, he submitted that he is already prejudiced against the accused and will therefore not give him a fair trial. On his part he submitted that the matter should be referred to another magistrate to complete the hearing.

This was clearly a mistake. The learned trial magistrate instead of ruling on the admissibility of exhibits ruled that the accused had a case to answer when the prosecution had not even closed its case. When he realized the mistake he purported to review his order and set it aside. I agree with both counsel that a subordinate court has no jurisdiction to review its order or judgment in a criminal case.

Mr. Murimi's contention that this not being an appeal by the state I cannot review and set aside the order complained of has no basis at all. This court has powers to review any order of the subordinate court howsoever it comes to its attention. Although I do not question the integrity of the trial magistrate, I agree with counsel for the appellant that for justice to be done and seen to be done the matter should be referred to another court. Consequently, in exercise of the powers conferred upon me by Section 364 of the Criminal Procedure Code, I set that order aside and direct that the matter be referred to another magistrate to complete the hearing of the case.

DATED and delivered this 28th day of January, 2010.

D. K. MARAGA
JUDGE.