

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Revision 332 of 2010

PATRICK MURUNGA KHAGOLI.....1ST ACCUSED

MACHARIA WANGONDU KARIUKI.....2ND ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT ON REVISION

The Accused Persons were charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code and alternative charges of handling stolen goods contrary to section 322(2) of the PC. The matter proceeded to full hearing and the Accused Persons were put to their defence. The defence hearing did not take place because the trial file in which the trial proceedings were recorded is said to have disappeared and has to date not been traced. Circumstances of the disappearance of the file are not clear but in the event two trial magistrates disqualified themselves from further handling the matter. The file has therefore been brought to this court for further directions.

Section 65 of the Constitution of Kenya provides as follows;

“Section 65(1) ...

(2) *the High court shall have jurisdiction to supervise any civil or criminal proceedings before a subordinate court or court martial and may make such orders issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.”*

In this case as the original file containing the record of evidence of the prosecution witnesses is said to have disappeared and is not traceable despite all efforts to trace it, the appropriate order to make is for the trial of the accused to start afresh. It is noted that the offences were committed on 5th July 2007 at Ngachura Farm in Nakuru District. I observe from the notes made by the Chief Magistrate that the Police File containing a record of investigation is still available and in the circumstances the particulars of the witnesses are also available. I therefore direct that the matter be heard *de novo* before any other judicial officer other than Mr. Mikoyan.

As the Accused Persons have been in custody for the last three years I direct that the hearing when commenced should proceed from day to day until completed. The prosecution should therefore line up the witnesses for the matter to proceed as directed. Those are the orders of the court.

Dated, signed and delivered at Nakuru this 21st day of April, 2010

M. J. ANYARA EMUKULE

JUDGE