

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Revision 316 of 2010

PENINAH SORTUM.....ACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

JUDGMENT ON REVISION

An irregularity has been brought to the attention of this court by the firm of Kiplenge & Kurgat, Advocates for the Accused in this matter.

The Prosecution had completed its case, and the learned trial magistrate had already written but not pronounced her Ruling that the Accused Person had a case to answer and had not therefore put the Accused to his defence.

However in the absence of his Advocate, the Accused stood up in court and expressed her dissatisfaction at the fact that the prosecution had closed its case without calling, in her opinion, two crucial witnesses, and that money had been paid out not to call the witnesses, and that even the investigation officer had not been called. The trial court consequently felt uncomfortable continuing with the matter and disqualified herself and directed that the matter start afresh.

The order that the matter start afresh was a misdirection on the part of the learned magistrate. She had no jurisdiction to make such an order. Only this court is vested with necessary jurisdiction to make such orders in its original and appellate jurisdiction.

Consequently that order is quashed and in exercise of the powers vested in this Court by Section 364(1)(b) of the Criminal Procedure Code, (Cap. 75, Laws of Kenya) I direct that the matter be taken over by another magistrate of competent jurisdiction and proceed in terms of Section 200 (1)(b) of the Criminal Procedure Code.

Dated, signed and delivered at Nakuru this 15th day of April, 2010

M. J. ANYARA EMUKULE

JUDGE