



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Revision 337 of 2010**

**EPHANTUS LETULUAI.....APPLICANT**

**VERSUS**

**REPUBLIC.....DEFENDANT**

**RULING**

A simple but fundamental issue has arisen in the course of the applicant's trial in Nakuru CM Criminal Case No. 1319 of 2006 in which he is charged with robbery with violence contrary to **Section 296(2)** of the **Penal Code**. In the course of the trial PW1 and PW2 in that case testified without the applicant having the services of an interpreter. When the Principal Magistrate who is now seized of the matter after taking over the trial from the previous magistrate who has since gone on transfer realized the omission after the prosecution had closed its case and the accused had testified in his defence he referred the matter to me under Section 67 of the Constitution.

**Section 77(2)(f)** of the **Constitution** provides that:-

**“Every person who is charged with a criminal offence shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge.”**

The applicant in this case is a Samburu who does not understand either English or Kiswahili. The lower record shows that when PW3 and PW4 testified there was interpretation into Samburu language. There was no such interpretation when PW1 and PW2 testified. In the circumstances I find that the applicant's constitutional right to a fair trial was violated. Consequently I direct that PW1 and PW2 be recalled and their evidence be interpreted into Samburu language which the applicant understands after which the trial court will decide the matter.

**DATED and DELIVERED at Nakuru this 24<sup>th</sup> day of May, 2010.**

**D. K. MARAGA**

**JUDGE.**