



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Criminal Revision 5 of 2010

NATHAN BIWOTT.....PETITIONER
=VERSUS=
REPUBLICRESPONDENT

*(Appeal from the decision of Hon. C.G. MBOGO ESQ. Chief Magistrate delivered on 1st April, 2010
at the Chief Magistrate's Court at Eldoret in CMCC NO. 6542 of 2009)*

RULING
(REVISION)

I. Background

1. The original accused in the Subordinate

Court case had been charged with the offence of House Breaking and Stealing Contrary to Section 304(1) and 279(b) of the Penal Code.

2. The Accounted items stolen amounted to Kshs 4,695,500/= in value.

3. On the day called out for hearing of the case, after a plea of not guilty was entered, the charge sheet was availed. The case was adjourned to 1st March 2010. The Complainant did not appear. Adjournment was sought and granted to 1st April 2010.

4. On the said date the Police file was not before the Court. Since 27th October 2009 the hearing had not commenced.

5. The Trial Magistrate acquitted Nathan Biwott under Section 210 of the Criminal procedure Code. No witnesses were called to give evidence.

6. The Republic failed to file an appeal against this decision despite being given that right by the Court of 14 days.

II. Revision

7. By a letter of 13th May 2010 received 17th May 2010 the Republic applied for a revision on grounds that there was a miscarriage of justice before Court.

III. Opinion

8. Under Section 364 Criminal Procedure Code, it gives the High Court powers to examine "records as to the correctness, legality or propriety of any finding sentence or order recorded or passed".

9. In this case the Republic has been given 14 days right of appeal. They failed to appeal within the given time. The option the said Republic now uses is to apply for revision.

10. Under Section 364 (5) Criminal Procedure Code this is not permitted. The Section reads:-

"when an appeal lies from a finding, sentence or order and no appeal is brought no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed".

(Emphasis supplied)

11. The Republic having had the right to appeal and failed to so do, they are accordingly precluded from bringing a revision proceedings.

12. I accordingly hold that the only option herein is that of an appeal. This Court declines to entertain proceedings by way of Revision.

DATED THIS 6TH DAY OF JULY 2010 AT ELDORET

M.A. ANG'AWA
JUDGE