



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Revision 20 of 2009

REPUBLICAPPLICANT
VERSUS
ERICK MULI MUTUNGIRESPONDENT

RULING

This matter came up before me for revision. I have perused the record of the proceedings before the subordinate court in **Criminal Case No. 1311 of 2009 REPUBLIC –VS- ERICK MULI MUTUNGI**. I note that on 14th August 2009 the trial magistrate Hon. Omburah acquitted the accused person under S. 202 of the Criminal Procedure Code on the basis that the complainant had failed to attend court. However by a letter dated 21st August 2009 the complainant **REGINA SYOMBUA**, a minor of 12 years through her lawyers Mutisya Bosire & Company Advocates, insists that on 14th August 2009 when the case was called out she and all her witnesses were present in court, yet the trial magistrate proceeded to acquit the accused claiming that she was absent.

The powers of the High Court on “**Revision**” are provided for in S. 362 to S. 367 of the Criminal Procedure Code. S. 362 provides –

“362 The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

S. 364(1) (b) of the Criminal Procedure Code goes on to provide that –

“364(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may –
(a)
(b) In the case of any other order other than an order of acquittal, alter or reverse the order.”

This provision is clear that the High Court has no powers to alter or revise a decision in a case where an accused person has been acquitted. In this case the learned trial magistrate did acquit the accused under S. 202 Criminal Procedure Code. As such I have no powers to alter or revise that acquittal. The only remedy available is for the State to appeal against the decision of the trial magistrate. In my view this may provide the best way forward.

Dated and Delivered at Mombasa this 15th day of December 2009.

M. ODERO

JUDGE

15/12/2009