



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA Criminal Revision 16 of 2009**

[Arising from Criminal Case No. 77 of 2008 of the Resident Magistrate’s Court at Wundanyi: F. Munyi – R.M.]

REPUBLIC.....APPLICANT

VERSUS

MOSEKI SAKI PAULO.....RESPONDENT

RULING

Before me is a request for revision arising from the proceedings in Criminal Case No. 77 of 2008 REPUBLIC –VS- MOSEKI SAKI PAULO, which was heard and determined by the learned Resident Magistrate at Voi Law Courts. Having perused the proceedings before the lower court I do note that on 27th August 2009 the trial magistrate read out his judgement in which she acquitted the accused person under S. 215 of the Criminal Procedure Code. Dr. John Khaminwa acting for the complainant, did by his letter dated 13th November 2009 express dissatisfaction with this decision of the trial court.

The powers of the High Court to review decisions emanating from the lower court are found in S. 362 to S. 367 (inclusive) of the Criminal Procedure Code. S. 364(1) (b) provides as follows –

“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 otherwise comes to its knowledge, the High Court may –*

(a)

(b) *In the case of any other order than an order of acquittal, alter or reverse the order.”*

It is clear from this provision that the powers of the High Court to alter or reverse an order, are **not** available in the case of an acquittal by a lower court. In this case the learned trial magistrate did acquit the accused under S. 215 of the Criminal Procedure Code. In light of the provisions of S. 364(1) (b) Cap 75 this court has no powers to alter or reverse this acquittal. The only remedy available is for the State to appeal the decision of the trial court, if it is so minded. That in my view would be the only available option to the complainant.

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

M. ODERO
JUDGE