

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Case 511 of 2007

JACOB WELLINGTON OCHOLA.....APPLICANT

VERSUS

REPUBLIC.....RE SPONDENT

RULING

I have considered the request for revision of the subordinate court's decision in this Nairobi Chief Magistrates Case No. 482 of 2005 REPUBLIC -VS- JACOB WELLINGTON OCHOLA. The request was made to this court in writing vide letter dated 23/10/2007, by T.N. Ngugi, Senior Resident Magistrate, Nairobi

The magistrate was requested to terminate the case under section 176 of the Criminal Procedure Code, apparently on the assumption that the accused had paid Kshs.50,000/= cash bail in court, and that the amount would be released to the complainant as part of the compromise. The accused was actually on free bond of the same amount of Kshs.50,000/=, therefore there was no money to pay the complainant. The magistrate, on the erroneous understanding that the amount had been paid in court as cash bail, actually acquitted the accused person.

The acquittal was an error. Section 176 only permitted the magistrate to stay or terminate the proceedings. An acquittal is a totally different thing. The acquittal meant that the court found that the accused did not commit the offence. That was not the position. I will have to quash the acquittal under the revision powers of this court and substitute therefore an order for stay of the proceedings.

Consequently, in exercise of this court's inherent powers of revision under section 362 and 366 of the Criminal Procedure Code (Cap. 75), I quash the acquittal by the magistrate and substitute therefore an order for stay of the proceedings. This revives the case and gives the subordinate court an opportunity to summon the accused, and make any relevant orders with regard to the proposed settlement.

It is so ordered.

Dated and delivered at Nairobi this 20th February 2008

George Dulu

Judge

In the presence of:-

Mwangi - Court clerk