



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Criminal Revision 2 of 2006**

**TERESIO MUCHIRA NJAGI.....1<sup>ST</sup> APPLICANT**

**HENRY NGUMA NDEGE.....2<sup>ND</sup> APPLICANT**

**CYRUS MITHAMO NJIRU.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING ON REVISION**

The charge sheet herein contains count 1- stealing contrary to section 275 of Penal Code.

Particulars are stated that:

1. Teresio Muchira Njagi
2. Henry Nguma Ndege
3. Cyrus Mithamo Njiru.

On the 14<sup>th</sup> day of February 2005 at Kirinyaga Township in Kirinyaga District within Central Province jointly with others not before the court stole land title deed for land parcel **No./ Mwea/Ngucui/579** the property of Kaguma Muchira Rukenya valued at shs.200,000/=. The Complainant is the said Kaguma Muchira Rukenya.

On 6/3/2006 a letter was received from the firm of Morris Njage & Co. Advocates who was instructed by one Moses Mwaniki who is not named in the charge sheet. It is this Moses Mwaniki who has called for this Revision. He was claiming that motor vehicle KAS 157 N was his property.

However on 27/9/2005 Mr. Mugo Advocate came on record in Criminal Case No. 2514/05 at Embu lower court for a person called Peter Ndinga who said he had purchased the vehicle. Mr. Mugo applied for the release of the vehicle which the court ordered on 14.10.2005.

On the same day State Counsel obtained orders for stay Orders were not executed and the vehicle is still in custody of Mr. Peter Ndinga. Mr. Peter Ndinga is neither an accused, a complainant or a witness in this

case. The vehicle was detained by police and not produced in court yet. The prosecution had indicated that they were still investigating the matter and releasing the vehicle would prejudice the police investigations.

**My Findings:-**

1. The Resident Magistrate erred in permitting an “***interested***” Party to join in a Criminal trial he was treating the proceedings as if it were civil proceedings.
2. The Trial Magistrate failed to take evidence of the interested party and relied solely on statements made by the Advocate. Trial Magistrate was shown a sale agreement relating to the vehicle but did not care to hear the seller Teresio Muchira Njagi (first Accused) in this case.
3. The Trial Magistrate ignored the pleas of prosecution that that vehicle was to be used as exhibit notwithstanding that the first accused was the owner of the vehicle at some time.
4. The Trial Magistrate conducted the issue of the vehicle without following set out court process especially not following the established procedure of taking sworn evidence and without hearing all the parties concerned thus abusing the criminal process of court.
5. He was interfering with the investigations by prosecutions of the Criminal case before him.

In the circumstances the orders made by Trial Magistrate on 7/10/2005 and 14/10/2005 are hereby set aside and declared invalid -null and void. The Motor Vehicle KAS 157 N shall be seized and returned to Police custody by DCIO Embu pending the finalization of this Criminal Trial. Also the Trial Magistrate is released from further conducting this case which will henceforth be tried by another Magistrate of competent jurisdiction.

Dated this 13<sup>th</sup> day of March 2006.

**J.N. KHAMINWA**

**JUDGE**