

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Revision Case 6 of 2006

PROSECUTOR, KITUI APPLICANT

VERSUS

KAMUTI MBINDYO ACCUSED

RULING

It has been brought to the attention of this court that most of the witnesses called to and who have testified in this case are those who were intended to testify in Kitui Principal Magistrate's Criminal Case No. 1210 of 2003. It appears that some confusion arose and witnesses who ought to have testified in Criminal Case No. 1208 of 2003, testified in Criminal Case No. 1210 of 2003 and vice versa. Little can be done in Criminal Case No. 1210 of 2003 where accused has been acquitted, probably because of the confusion. But since Criminal Case No. 1208 of 2003 has not been completed, a remedial action of this court under Section 362 of Civil Procedure Code can be taken.

It is difficult to understand how such confusion could have occurred and little explanation has been given but it is clear to me that the confusion may not have been intended. It may also be possible that it arose because the accused person was same in both cases.

Be that what it may, I think that the best course will be to order that the trial starts de novo. It is so ordered.

In view of the fact that this case started in 2003, it will be unfair to subject the accused person (s) to another, probably deliberate slow trial once again. Accordingly, the retrial shall be commenced within 30 days and shall not be adjourned for any reason from one day to the next day, until it is completed. Orders accordingly.

Dated at Machakos this 6th day of April, 2006

Read and delivered in the presence of

D.A. ONYANCHA

JUDGE