



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

**Criminal Revision 310 of 2006**

**ARISING FROM VOI SRM CR. CASE NO. 164 OF 2006)**

**REPUBLIC .....APPLICANT**

**VERSUS**

**FREDRICK NJENGA & 5 OTHERS .....RESPONDENTS**

**RULING ON REVISION**

In exercise of the Supervisory jurisdiction under Section 65(2) of the Constitution and under Section 362 of the Criminal Procedure Code, this court called for the file relating to Voi SRM Criminal case No. 164 of 2006. This court while exercising such jurisdiction is to satisfy itself as to the correctness, legality or propriety of any findings, sentence or order recorded or passed and as to the regularity of any proceedings before the subordinate court.

I have perused the recorded proceedings. It is apparent that on the 10<sup>th</sup> day of February 2006 that Fredrick Njenga Igogo, Michael Mirago Kamau, William Mwangi Kamau alias Benson Njoroge Mwangi, Simon Mburu Wanyoike Kariuki were arraigned before the Voi Senior Resident Magistrate upon which they all pleaded not guilty to a charge of one main and two alternative counts. The main count is in respect of a charge of robbery with violence contrary to Section 296(2) of the Penal code. The particulars relating to this count are that on the 27<sup>th</sup> day of January 2006 at Mwatate in Taita Taveta District within Coast Province, jointly with others not before court while armed with dangerous weapons namely pistols robbed Doreen Gakii Mugambi of green garnet gemstones valued at Kshs.8 million, U.S.D. 20,833 equivalent to Kshs.1,500,000/-, one video camera valued at Kshs.75,000/-, still camera valued at Kshs.32,000/- two gold chains valued at Kshs.8,000/-, one gold ring valued at Kshs.7,000/-, four mobile phones Samsung A800, Nokia 7250, Nokia 4310 and a Motorola valued at Kshs.24,000/- all valued at Kshs.9,646,000/- and at or immediately before or immediately after the time of such robbery, threatened to use actual violence to the said Doreen Gakii Mugambi.

Count II is in respect of an alternative charge of being in possession of suspected stolen property contrary to Section 323 of the Penal Code. This Count only concerns Fredrick Njenga Igogo. The particulars are that on the 27<sup>th</sup> day of January 2006, at Voi Township in Taita Taveta District within Coast Province, having been detained by Senior Sergeant David Kombe, a Police Officer attached to C.I.D Taita Taveta as a result of the exercise of the powers conferred by Section 26 of the Criminal Procedure Code, had in his possession motor vehicle registration number KAR 633B Subaru Impreza Silver in colour reasonably suspected to have been stolen or unlawfully obtained.

The second alternative charge is expressed in count III as against Michael Mirango Kamau in which he is charged with handling of stolen goods contrary to Section 322(2) of the Penal Code. It is said that on the 27<sup>th</sup> day of January 2006 at Voi Township in Taita Taveta District within the Coast Province otherwise than in the course of stealing dishonestly received or retained two mobile phones make Nokia 7250 and 3410 knowing or having reason to believe them to be stolen goods.

The record shows that only one prosecution witness has testified and that the case scheduled for further hearing on 24<sup>th</sup> May 2006.

The subject matter of the ruling on revision are the proceedings of 7<sup>th</sup> March 2006. The record shows that on that date the case was mentioned before one A.W. Mwangi, the Resident Magistrate, Voi, upon which Mr. Muthami advocate for the accused persons applied to have motor vehicles registration numbers KAU 694B Toyota and KAS 639H to be released to the owners. It appears the Court Prosecutor conceded to the oral application on condition that the motor vehicles should be availed in court whenever they are needed by that court for the trial. The Learned Resident Magistrate proceeded to grant the orders as prayed. The record shows that the aforementioned motor vehicles were impounded by the police at the time of arresting the accused persons.

What is obvious is that the main charge facing all the accused persons is that of robbery with violence contrary to section 296(2) of the Penal code. The First Schedule of the Criminal Procedure Code shows that such an offence can only be tried in a Magistrate's court presided over by a Magistrate holding the rank of Senior Resident Magistrate and above. In this case a Resident Magistrate took proceedings relating to the case and made substantive orders at a mention date when the magistrate clearly had no jurisdiction to handle the matter. Consequently, I am satisfied that the learned Resident Magistrate acted impropriety by issuing orders in a matter he or she had no jurisdiction to hear and determine. The fact that the application was not opposed did not in itself confer jurisdiction to the learned Resident Magistrate grant such orders.

I am convinced that such orders can be interfered with on revision. The end result therefore is that the proceedings of 7<sup>th</sup> March 2006 taken before A.W. Mwangi, Resident Magistrate plus the consequential order are set aside. The law enforcement agencies are at liberty to impound the affected motor vehicles if necessary. The application for the release of the aforesaid motor vehicles may be lodged afresh before courts of competent jurisdiction which may at their discretion hear and determine the same.

**Dated and delivered at Mombasa this 19<sup>th</sup> day of May 2006.**

**J.K. SERGON**

**J U D G E**