

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Criminal Revision 88 of 2006

REPUBLIC APPLICANT

VERSUS

CHARLES M'TWAMWARI RESPONDENT

RULING

This is an application by the state for revision of the learned trial magistrate's ruling dated 12.9.2005. The ground for the application is that the learned trial magistrate reached a conclusion without hearing the evidence of any single witness, and further that the purported ruling was by way of a comment and not a ruling.

Section 362 of the Criminal Procedure Code (CPC) gives this court the power to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, etc, I have examined the record in inquest file No. 1 of 2005 and find that no proceedings were ever conducted by the learned magistrate as provided under section 387 of the CPC. The magistrate's opinion could only have been recorded at the close of the inquiry and not otherwise.

In the circumstances, I do revise the ruling of the learned trial magistrate ordering closure of the inquest file and in exercise of the powers conferred upon me by the provisions of section 362 of the CPC order re-opening of the inquest to be conducted by the Principal Magistrate's Court Nkubu.

Orders accordingly.

Dated and delivered at Meru this 1st Day of August 2006.

RUTH N. SITATI

J U D G E