

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Revision 93 of 2006

REPUBLIC PROSECUTOR

VERSUS

JOSEPH M'MUGAMBI MWAMBIA ACCUSED

RULING

This matter was referred to me by the Principal Magistrate Maua Law Courts for the purpose of considering whether the case merits review.

The accused was charged in count one, with malicious damage to property contrary to section 339(1) of the Penal Code in which it was alleged that on 2nd July he maliciously damaged various crops belonging to one **Isaac Mithika** all valued at Kshs. 47,440/=. In the second count, he was charged with arson contrary to section 332(a) of the Penal Code. It was alleged that on 2nd July 2005, he unlawfully set fire to a building the property of ISAAC MITHIKA valued at Kshs. 20,000/=.

On the 14.6.2006 the learned trial magistrate (D. MORARA R.M.) dismissed the case against the accused under section 210 of the CPC and acquitted the accused. By that time, one prosecution witness had testified.

Section 210 of the CPC provides that:-

“At the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make his defence, the court shall dismiss the case and shall acquit him forthwith.”

What was done by the magistrate in this case was premature. There was no closing of the prosecution's case, there was no summing up by both parties. The only submissions made were in respect of an application for adjournment. If the learned trial magistrate refused to grant the application for adjournment, as he had a right to do for good reasons, he should have given the prosecutor an opportunity to close his case and then invite submissions before dismissing the case against the accused. The record shows that even after the prosecution had indicated that the case could proceed, the learned trial magistrate went ahead to dismiss the case.

In the circumstances and under the powers conferred upon me by the provisions of section 362 of the CPC, I find that the dismissal order and subsequent acquittal of the accused was irregular.

Accordingly, that order is revised and in lieu thereof, I order that the case shall be remitted back to Maua Law Courts for hearing de novo. The hearing shall be conducted by a magistrate other than D. Morara, Resident Magistrate.

Orders accordingly.

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

RUTH. N. SITATI

JUDGE