



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

**AT MERU**

**Criminal Revision 101 of 2006**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**JACOB KOOME MAORE ..... ACCUSED**

**ORDER**

*(Being Revision arising from dismissal in Maua PM’s Court Criminal Case No.2868 of 2006 dated 14.11.2006)*

This matter emanates from Maua Principal Magistrate’s Court Criminal Case No. 2868 of 2006 – Republic –Vs – Jacob Koome Maore.

The resident magistrate at Maua, Mr. D. Morara dismissed the case on 13.11.2006 on the ground that the witness, PW1, looked confused. The dismissal was purportedly made under section 210 of the Criminal Procedure Code (CPC) which provides as follows:-

*“210. If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the 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 a defence, the court shall dismiss the case and shall forthwith acquit him.”*

A dismissal under section 210 of the CPC cannot be made unless and until the whole evidence has been tendered and submissions made for by both parties, but not in the circumstances of this case.

In this case, the learned resident magistrate did not apply his mind judicially to the relevant section and consequently caused a miscarriage of justice by dismissing the prosecution’s case in purported application of section 210 of the C.P.C.

Accordingly, I order that this case be remitted back to the Principal Magistrate’s court at Maua for hearing de novo. The hearing should be conducted by a magistrate other than Mr. D. Morara.

Orders accordingly.

Dated at Meru this 30<sup>th</sup> day of November 2006.

RUTH N. SITATI

JUDGE