

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Criminal Revision 98 of 2006

REPUBLIC PROSECUTOR

VERSUS

MIRIAM KENDI ALI 1ST ACCUSED

FRIDAH KATHURE MAROKA 2ND ACCUSED

ORDER

(Being revision arising from dismissal in Maua PM's Court Criminal Case No. 1541 of 2006 – dated 13.11.2006)

This matter emanates from Maua Principal Magistrate's Court Criminal Case No. 1541 of 2006 – Republic –Vs – Miriam Kendi Ali & another.

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 order under section 210 of the CPC cannot be made unless and until the whole evidence has been tendered and submissions made by both parties.

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 under the wrong section.

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 30th day of November 2006.

RUTH N. SITATI

JUDGE