

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL DIVISION

CIVIL CASE 285 OF 2004

**IBRAHIM MUTWIRI NJAGI)
APPLICANTS**

JACOB KANYARU JULIUS

VERSUS

**REPUBLIC OF KENYA.....
RESPONDENT**

R U L I N G

In Marimanti Criminal Case No. 238 of 2003, it was ruled by this court that the said court unlawfully transferred the said case to Meru Chief Magistrate without having power or authority to do so.

In doing so, the honourable magistrate had purported to split the case so that part of it in respect to one accused person, Murimi Tumbo, remain at Marimanti for further trial while the rest of it went to Meru for fresh trial. This court also had ruled in its ruling dated 12th April, 2005 that the Marimanti court had no authority or power to hear the remaining part of the case and that the proceedings thereof were not only irregular but fatally so.

I have carefully considered the situation created as a result of the said trial. I am aware that the honourable trial magistrate proceeded to convict the applicant herein of robbery with violence contrary to section 296(2) of the Penal Code. But the proceedings as already indicated were totally and basically irregular. They were fatally defective. They and the conviction and sentence, cannot therefore be left to stand as they were a nullity.

Mr. Muteti the State Counsel addressed me on the issue. So did Mrs. Ntarangwi. Their view both was that the proceedings and conviction and sentence of the lower court, should be quashed and be set aside respectively. I agree with their sentiments. Under the provisions of section 364(1)(a) of the Criminal Procedure Code, the conviction in Marimanti Cr. Case No. 238 of 2003 is hereby quashed and the sentence set aside in relation to the applicant Murimi Tumbo. The said accused jointly with his original colleagues Ibrahim Mutwiri Njagi and Jacob Kanyaru Julius, shall be subjected to a fresh trial in the Chief Magistrate's Court at Meru without delay.

This court is informed that Ibrahim Mutwiri Njagi and Jacob Kanyaru Julius were charged with the original offence of robbery with violence at Meru Law Courts in Criminal Case No. 1484 of 2004. At the discretion of the prosecution, the applicant Murimi Tumbo should be joined in the case at an appropriate time. Let the said Meru Chief Magistrate's Court Cr. Case No.1484 of 2004 be mentioned on 16th August, 2004 for the purpose of joining the applicant Murimi Tumbo in the case. It is so ordered.

Dated and delivered at Meru this 25th day of July, 2005.

D. A. ONYANCHA

JUDGE

