

withdrawn under Section 87 (a) Criminal Procedure Code pending warrant of arrest. The magistrate had no jurisdiction to order a withdrawal of a case under Section 87 (a) Criminal Procedure Code unless an application to withdraw had been made by the prosecutor or it is made on the instructions of the Attorney General. This court accordingly revises the order of the magistrate under Section 362 Criminal Procedure Code made on 4.3.2004 causing the case to be withdrawn under Section 87 (a) Criminal Procedure Code. The case is ordered reinstated.

The appellant has so far served 3 months out of the sentence of 6 months meted. The appellant was given the maximum sentence which I believe was excessive under the circumstances and I will order that the appellant be set free forthwith unless otherwise lawfully held.

Right of appeal 14 days.

Dated, read and delivered at Machakos this 4th day of May 2004.

R. V. WENDOH

JUDGE

Read, dated and signed in the presence of Mr. Kizito for state.

R. V. WENDOH

JUDGE