



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION NO. 36 OF 2004

(From original Sentence in Criminal Case No. 2987 of 2003 of the Chief Magistrate’s Court at Nairobi)

REPUBLIC.....APPLICANT

VERSUS

KUMBWA MOHAMED SEIF

SAID SAGGER MOHAMMED .

SALIMIN KHAMIS MOAHMMEDRESPONDENTS

R U L I N G

The Application is a Chamber Summons dated and filed on 8th November 2004. The Applicant is the Republic. The Application is brought under **Section 362, Section 363 and Section 365** of the **Criminal Procedure code and Section 25A of the Evidence Act**. It seeks in pertinent;

- 1.) That the Honourable Court be pleased to grant an order, to reverse the orders made by the Chief Magistrate in his ruling of 30th July 2004 in Criminal Case No. 2987 of 2004.
- 2.) That the amendment to the Criminal Procedure Code and Evidence Act contained in the Criminal Law (Amendment) Act 2003, are not retrospective.
- 3.) That the evidence of **JOHN MISIJIWE** (PW30) should be taken.

In essence the Applicant is challenging the trial magistrate’s ruling on the issue of admissibility of certain evidence in the case. The Applicant contends that the ruling upholding objections by the accused persons in the case in which they sought certain evidence be found inadmissible under **Section 25A** of the **Evidence Act** was irregular.

Section 362 of Criminal Procedure Code gives power to the High Court to call for records before subordinate courts for purposes of satisfying itself as to the “correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such Court.”

Section 364 of Criminal Procedure Code sets down the powers of the High Court on revision and **Section 365** gives the High Court discretion as to hearing of parties.

In the Applicants supporting affidavit, the deponent challenges the ruling of the trial Court dated 30th

July 2004. That ruling is also included in the documents filed together with this Application. **Section 362 of Criminal Procedure Code** applies only where a subordinate Court has made a finding, order or sentence. It cannot be applied to interlocutory rulings made before the final decision of the subordinate court, especially where, like in this case, it is shown that the trial is still going on before the Court. It is impractical and improper for interlocutory orders made in the proceedings that are still pending before the lower Court to be subjects of **REVISION**.

I find that the ruling by the learned trial magistrate upholding an objection by the accused persons against admission of certain evidence is not an order, finding or sentence. The ruling cannot therefore be subject of a **REVISION**, since it does not form a definite judgment, finding, order or sentence of the Court. **Section 362 of the Criminal Procedure Code** does not apply. Consequently the Application is incompetent and is therefore struck off.

Dated at Nairobi this 17th day of December 2004.

LESIIT

JUDGE

Read, signed and delivered in the presence of;

Maobe for 2nd and 3rd Respondent

Holding brief for Wandugi for 1st Respondent

Nyamosi for Mr. Okello for Applicant

LESIIT

JUDGE