

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.107 OF 2019

REPUBLIC.....APPLICANT

VERSUS

ALEX MATHENGE MUTHUI.....1STRESPONDENT

EDWARD KABUI MWANIKI.....2NDRESPONDENT

RULING

The Applicant, the Nairobi County Government, through the Republic was aggrieved by the decision of the trial court in **Nairobi Chief Magistrate’s Court Criminal Case16890 of 2018 (City Court) Republic -vs- Alex Mathenge Muthui and Edward Kabui Mwaniki.** The decision made on 26th March 2019 terminated the criminal proceedings against the Respondents under **Section 210** of the **Criminal Procedure Code** after the Applicant had apparently failed to avail witnesses on the day the trial had been scheduled for hearing. The Applicant moved this court pursuant to the provisions of **Article 165(6) & (7)** of the **Constitution** and **Sections 362 & 364** of the **Criminal Procedure Code** seeking to have that decision revised by this court. The grounds in support of the application are stated on the face of the application. It is supported by the affidavit of Johnstone Muyuka, the County Prosecutor for Nairobi County Government. The application was opposed by the Respondents.

Mr. Muyuka, counsel for the Applicant and Mr. Nyachio counsel for the Respondent agreed that the Ruling made in **Nairobi High Court Revision No.106 of 2019 Republic vs Nahashon Mathenge Wahome & Charles Wanjau Kanyi** would apply in this application. This court having ruled in the above application that the Applicant wrongly invoked the jurisdiction of this court under **Section 362** and **Section 364** of the **Criminal Procedure Code**, and further that the Applicant’s remedy lay in filing an appeal to this court, this court therefore dismisses the Applicant’s application for lack of merit. The reasons for dismissal are well articulated in **Nairobi High Court Criminal Revision No.106 of 2019.** It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF JULY 2019

L. KIMARU

JUDGE