



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL REVISION NO. 13 OF 2014**

**ABDI ISAAK HASSAN ..... APPLICANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

***(From the decision in Kyuso Criminal Case No. 113 of 2014 –B. M Mararo – PM) .***

**RULING**

This matter came before this court on a request for exercise of its criminal revisionary powers through an application filed by Mulinga Mbaluka & Co. Advocates. In exercise of its revisionary powers under section 362 of the Criminal Procedure Code (cap 75), this court ordered as follows:-

***“In the circumstances, I exercise this courts revision powers and quash the conviction of the subordinate court herein, and set aside the sentence. I order that if the applicant is in prison, he should be released forthwith unless otherwise lawfully held”.***

Thereafter, a Notice of Motion was filed on 12/11/2015 seeking the following orders:-

- a. That the court do give directions on the fine deposited by the convict.
- b. The honourable court do order release of the court fine to M/s Mulinga Mbaluka & Co. Advocates.

After the application was served on the DPP’s office Garissa it was argued interpartes. Mr. Nyasani represented the applicant. The Prosecuting Counsel (Mr. Orwa) held the position that their office could not be dragged into determining whether a fine be paid to an advocate. Mr. Orwa also submitted that the subordinate court should have been called upon to say why they did not pay back the fine, before bringing to this court the present application.

I have considered the application and arguments on both sides.

This court’s orders following the revision application are clear. The conviction was quashed and sentence set aside. It follows that, if a fine was paid, then the same had to be refunded to the accused person. The fine should thus have been refunded to the accused in the trial court.

This court has no powers to order that the fine be paid to the lawyer, I agree with the prosecution counsel that the accused is the person who is entitled to a refund of the fine, even if the fine was paid on his behalf by someone else. The only thing this court can do now is to clarify that if the fine was paid then it is to be refunded to the accused who was convicted by the magistrate.

The above are the orders of the court.

**Dated and delivered at Garissa this 3<sup>rd</sup> March 2016.**

**GEORGE DULU**

**JUDGE**

