

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION APPLICATION NO. 220 OF 2015

REPUBLIC.....APPLICANT

VERSUS

JAMES ACHOKI MBOGA..... RESPONDENT

RULING

The file is before this court pursuant to **Section 362 of the Criminal Procedure Code** with a view to the court satisfying itself as to the correctness, legality or propriety of the finding of the learned trial magistrate's court in the **Chief Magistrate's Court Nairobi Criminal Case No. 568 of 2012** in which the accused therein was acquitted without hearing the evidence of the prosecution witnesses.

The request for revision is contained in a letter dated 27th October, 2015, by M/S Mong'are Bw'Okong'o & Associates, Advocates on behalf of the complainant in the criminal trial. The grounds raised therein are as follows:

1. **The acquittal of the accused was illegal having been based on a wrong provision of law.**
2. **The complainant was not accorded a chance to give evidence.**
3. **The complainant will suffer irreparable damage if the matter does not go to full hearing.**

Under Section 364(4) of the Criminal Procedure Code:

“Nothing in this Section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.”

The provision deals with powers of the High Court on revision. That implies that where an accused person has been lawfully acquitted, the only recourse to a discontented party is in an appeal. Under **Section 354(3) (c) of the Criminal Procedure Code** on appeal, the High Court is conferred with powers to order that a trial be opened and witnesses be called in support of either party's case. The said Section provides as follows:

“in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High Court thereon to the subordinate court for determination, whether by way of re-hearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as the High Court may think fit.”

The complainant was properly represented by a prosecutor from the Office of the Director of Public Prosecutions (D.P.P). He is the person conferred with the powers to appeal on his behalf. He is also at liberty to apply for leave to appeal out of time.

In the result, the request for revision is dismissed.

DATED and SIGNED this 5th day of November, 2015.

G. W. NGENYE – MACHARIA

JUDGE