



REPUBLIC OF KENYA
IN THE HIGH OF KENYA

AT NYERI

REVISION CASE NO. 32 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JOHN NDIRANGU GATIMU.....ACCUSED

RULING ON REVISION

1. By a letter dated the 15th September, 2015 the Office of the Director of Public Prosecutions (ODPP) are seeking an order of revision under the provisions of Sections 362-367 of the Criminal Procedure Code (Cap 75)(hereinafter referred to as the ‘ACT’) to revise the Judgment delivered on the 10th September by the Hon. B.Ekhubi SRM in Othaya PMCC.No.308of 2014.

2. The applicant’s grounds for revision are as set out hereunder;

- i. That the honourable trial magistrate erred in failing to take into account the section of the offence that the accused was charged with;
- ii. That this honourable trial court erred and misdirected himself to sections of the law which had no relation to the said offence the accused was charged with;
- iii. That the honourable trial Magistrate erred and misguided himself by relying on an unrelated authority in guiding him in reaching his decision;

3. The only point found for determination is whether this court has the powers to revise or alter the decision.

4. The applicant contends that when acquitting the accused under the provisions of Section 215 of the Act the trial magistrate erred by failing to consider the sections of the offence that the accused had been charged with. He further misdirected himself on sections of the law that had no bearing on the offence and that he had also misguided himself by using an unrelated authority to arrive at his decision.

5. The provisions of Section 362 of the Act grants the High Court powers of revision and reads as follows;

‘The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose 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 subordinate court.’

6. The forgoing section should be read within the context of the provisions of Section 364(1)(b) of the Act which states;

‘364.(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may-

(a).....

(b) in the case of any other order other than an order for acquittal, alter or reverse the order.’

7. The court record shows that evidence was adduced by the prosecution side and the accused side and thereafter a judgment was rendered whereby the accused was acquitted. Notwithstanding the fact that the trial magistrate may have been misguided or may have misdirected himself the fact is that there was an acquittal and the provisions of Section 364(1)(b) state with clarity that this court may revise or alter any other order made by a subordinate court other than an order for acquittal.

8. The application for revision is therefore disallowed as this court is found to have no powers to alter or to revise a decision where an accused person has been acquitted. I can only add that the ODPP is at liberty to file an appeal against the said judgment.

Dated, Signed and Delivered at Nyeri this 3rd day of November 2015.

HON. A MSHILA

JUDGE