



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL REVISION CASE NO. 7 OF 2013**

**REPUBLIC.....APPLICANT**

**versus**

**MAINA MBUTENI alias KAUMA .....RESPONDENT**

**REVISION**

1. The matter has been referred to this court for revision under the provisions of sections 362 – 367 of the Criminal Procedure Code by the office of Director of Public prosecutions in respect of Karatina Senior Resident Magistrate inquest case No. 9 of 2008 on the basis that the trial magistrate erred in failing to give weight to the evidence given by I.W.8/I.W.11 one Mureithi Muriuki who testified to have seen Wairimu Ndirangu, Kirigo Njoroge, Rose Wambui, Charles Mwangi and Mwangi Gichohi assaulted the deceased.
2. That the magistrate erred in holding that the deceased was unlawfully killed by unknown persons in presence of the evidence of I.W.8.
3. I have looked at the proceedings before Hon. Omido and his ruling herein and in specific on the evidence of the evidence of I.W.8 where he says that.

***“On the day that P.W.8 was initially called to testify (14.10.09) the court found that he was a refractory witness and as such the veracity of his testimony remains in question.”***

4. The evidence presented before the court shows that the deceased was a victim of mob justice and I therefore agree with the finding of the trial magistrate and hold that there was no way I.W.8 would have identified those named while all other witnesses called were unable to identify them.
5. I therefore agree with the finding of the inquest magistrate and decline to revise the same based upon the evidence on record.

Dated at Nyeri this 8th day of July 2013.

J. WAKIAGA

JUDGE