

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: GICHERU, KWACH & SHAH, J.J.A
CRIMINAL APPEAL NO. 29 OF 1998
BETWEEN

REUBEN H. MULI.....APPELLANT
AND
REPUBLIC.....RESPONDENT

**Appeal from a conviction, judgement, decree and order of
the High Court of Kenya at Nairobi (The Chief
Justice F.K. Apaloo) dated 3rd November, 1994**
in
H.C.C.CR.C. NO.59 OF 1994)

JUDGMENT OF THE COURT

On 3rd November, 1994 the then Chief Justice Apaloo, purportedly exercising his powers of revision, and in the absence of the accused persons (one of whom was the appellant now before us), set aside the acquittal of all the seven accused persons which order of acquittal was made under section 202 of the Criminal Procedure Code. That was in Machakos Criminal Case No. 59 of 1994.

The accused persons were charged with various offences ranging from Robbery, contrary to section 296(1) of the Penal Code, stealing by persons employed in the Public Service, contrary to section 280 of the Penal Code, aiding the commission of stealing by persons employed in the Public Service, contrary to section 280 as read with section 20(c) of the Penal Code and the appellant was charged with the offence, in the alternative, of handling stolen goods contrary to section 322(2) of the Penal Code.

On 25th October, 1991 the learned Ag. Magistrate N. O. Masara Esquire had acquitted all the accused persons of the offences they were charged with under section 202 of the Criminal Procedure Code as there was no complainant.

An acquittal under section 202 of the Penal Code is a bar to any subsequent information or complaint for the same matters against the same accused person as provided for in section 218 of the Penal Code.

The learned Chief Justice had no jurisdiction to revise the order of acquittal under section 202 aforesaid. What he proceeded to do was wrong and not provided for in law and a fortiori so when the accused persons were not even present.

Mr. Bwonwonga, the Assistant Deputy Public Prosecutor, has rightly conceded the appeal. We allow the appeal and set aside the order of the learned Chief Justice setting aside the appellant's acquittal in the Magistrate's court and directing that he be tried afresh by a different magistrate. The effect of this judgment quite obviously is that the acquittal order made on 25th October, 1991 is restored.

Dated and delivered at Nairobi this 18th day of December, 1998.

J. E. GICHERU

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JUDGE OF APPEAL

R. O. KWACH

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.