**Republic v Owako and others**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 27 November 1974

**Case Number:** 79/1974 (10/75)

**Before:** Trevelyan J

**Sourced by:** LawAfrica

*[1] Criminal Practice and Procedure – Autrefois acquit – Murder – Accused discharged by magistrate at preliminary inquiry – May again be charged with murder – Penal Code, s.* 239 (*K.*).

*[2] Criminal Practice and Procedure – Preliminary inquiry – Accused may be committed for trial from more than one preliminary enquiry.*

*[3] Criminal Practice and Procedure – Preliminary inquiry – Nullity – Improper joinder of accused does not nullify inquiry.*

**Editor’s Summary**

The first and second accused were charged with murder and at a preliminary inquiry the magistrate committed the first accused and discharged the second accused. An information was filed against the first accused and a nolle prosequi was entered. All four accused were then arrested and charged and at a further preliminary enquiry were all committed for trial. For the second accused, it was submitted that as he had been discharged by the first magistrate, he could never again be charged with murder, that an accused can only be committed for trial from one preliminary enquiry, that the information in respect of the first accused should only have named him. For the other accused, it was submitted that the second inquiry was a nullity in respect of all of them.

**Held –**

(i) a discharge at a preliminary enquiry is not a bar to a subsequent charge of the same offence on the same facts;

( ii) an accused may appear at more than one preliminary inquiry and may be committed for trial more than once;

(iii) an inquiry is not a nullity in respect of other accused solely because one accused should not have been joined and such joinder cannot be prejudicial.

Objections overruled.

**Cases referred to Judgment:**

(1) *R. v. Kristofa Male*, (1934) 1 E.A.C.A. 151.

(2) *R. v. Hannay* (1905), 2 W.L.R. 543 (Can.).