



**Wamburi v Republic (Criminal Revision E259 of 2024)
[2024] KEHC 11464 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL REVISION E259 OF 2024
AK NDUNG’U, J
SEPTEMBER 30, 2024**

BETWEEN

ISAACK WAMBURI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Accused, Isaack Wamburi was charged with the offence of stealing contrary to Section 278 of the Penal Code and was sentenced to serve 18 months imprisonment. The particulars of the charge are that on the 9th day of March 2024 at Tandare area in Kirima Sub-County within Laikipia County stole three sheep white in colour valued at Kshs. 45,000/= the property of Joseph Njuguna Chege.
2. Vide a letter dated 26th September 2024, the trial Magistrate, E.Ngugi, SPM has brought to the attention of this court an anomaly the gist of which is that the said matter came up for ruling on the 10th July 2024. The record indicates that the ruling was delivered acquitting the accused. Inexplicably, the same record shows that the accused informed the court that he wished to change plea and plea was taken on 11th July 2024, the accused convicted and sentenced.
3. The fact of the delivery of a ruling acquitting the accused and the conviction of the same accused on a plea of guilt are not legally tenable in the same proceedings.
4. The trial magistrate has attributed this anomaly to an honest mistake on his part which escaped the notice of the prosecution counsel as well.
5. The jurisdiction of this court to make orders on revision is under Section 362 of the Criminal Procedure Code which provides:-

“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 court is supposed to satisfy itself on the correctness, legality or propriety of any finding, sentence or order.
7. I have perused the record. There is an obvious glaring error apparent on the face of the record. There is discernable incorrectness, illegality and impropriety in the proceedings and hence in the outcome of the proceedings.
8. Once a ruling on a no case to answer was made, it was not open for the court to entertain a change of plea from the accused. To that extent, the conviction and sentence are vitiated by the irregularity therein a state of affairs that is not sustainable in law. The same is amenable to revision by this court and appropriate orders given pursuant to Section 364 of the *Criminal Procedure Code*.
9. Incidents like this must be frowned upon and magistrates must be warned on the need for careful and meticulous handling of court proceedings to avoid visiting injustice on parties before court as has surely happened in this case.
10. From the foregoing, the conviction and sentence in this matter are irregular. I invoke the powers of revision under Section 364 of the *Criminal Procedure Code*, set aside the conviction and sentence imposed by the trial court and substitute thereof an order acquitting the accused. He is to be set at liberty forthwith unless otherwise lawfully held.

DATED SIGNED AND DELIVERED THIS 30TH DAY OF SEPTEMBER 2024.

A.K. NDUNG’U

JUDGE

