



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Panyako v Republic (Criminal Revision E067 of 2023)
[2023] KEHC 25765 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E067 OF 2023
WM MUSYOKA, J
NOVEMBER 22, 2023**

BETWEEN

LUKAS KHAGIO PANYAKO APPLICANT

AND

REPUBLIC RESPONDENT

(Revision arising from a sentence order, in Port Victoria SRMCCRC No. 57 of 2023 (formerly Busia CMCCRC No. 1256 of 2022), by Hon. AK Njeru, Senior Resident Magistrate, SRM, made on 7th November 2023)

RULING

1. The revision cause herein was initiated by way of a letter dated 7th November 2023. The letter is addressed to the Judge, by Hon. Njeru, SRM, forwarding the file, in Port Victoria SRMCCRC No. 57 of 2023 (formerly Busia CMCCRC No. 1256 of 2022), and asking the Judge to exercise revisionary power to revise, review or set aside the orders of 7th November 2023, where the accused person, who was due to face trial, had been erroneously treated as having pleaded guilty and was sentenced.
2. I have perused the trial court record. 2 accused persons, Albert Mackten Obare and Lukas Khagio Panyako, were arraigned on 4th November 2022, on a charge of burglary, with an alternative of handling stolen goods. The both denied the charges, and the matter was fixed for hearing on 30th March 2023. On the hearing date, the 1st accused, Albert Mackten Obare, changed plea. The facts were read to him on 25th May 2023, and he was convicted on his own plea. The court called for a probation report, and one was filed. The trial court did not find it favourable, and sentenced him, on 27th July 2023, to serve 1 year in prison, on both limbs, to run concurrently.
3. In the meantime, the file was transferred to Port Victoria, with a mention date fixed for 31st October 2023, for the purpose of trial of the 2nd accused, Lukas Khagio Panyako, who had not changed plea. The transfer order of 31st July 2023, was, however, silent on what was outstanding. The 2nd accused



did not attend court on 31st October 2023, and a warrant for his arrest was issued. He showed up in court on 7th November 2023, and explained himself. The warrant of arrest was lifted. The court then proceeded to sentence him to 3 years imprisonment, ostensibly believing that the probation report on record, dated 24th July 2023, related to him, after finding that the report was unfavourable.

4. I am persuaded that the sentencing of the 2nd accused was by mistake, for he had not pleaded guilty, and had not been convicted. He should be facing trial, for he pleaded not guilty to the charges. He should have been given a date for hearing, instead of being sentenced. However, Hon. Njeru, SRM, was new in the matter, the same having been recently transferred from Busia Chief Magistrate's court. The record of the proceedings, between 30th March 2023, when the 1st accused changed plea, and 7th November 2023, when the 2nd accused was erroneously sentenced, is silent on the 2nd accused. Indeed, it was kept in a manner that suggested that the court, from 30th March 2023, was dealing with only one accused person. So that when Hon. Njeru, SRM, took the matter over, it appeared as if the only thing outstanding was the sentencing of the apparently sole accused person in the matter. So, there is an error on the record, correctable by way of revision.
5. Consequently, I do hereby invoke the revisionary powers conferred upon the High Court, by sections 362 and 364 of the Criminal Procedure Code, Cap 75, Laws of Kenya, and quash the sentence imposed on the 2nd accused, Lukas Khagio Panyako, on 7th November 2023. If he has been taken to prison custody, to serve the sentence imposed on 7th November 2023, he shall be set free, for he was on bond, and his warrant of arrest had been lifted on 7th November 2023. The trial court shall thereafter fix the matter, in Port Victoria SRMCCRC No. 57 of 2023 (formerly Busia CMCCRC No. 1256 of 2022), for trial. It is so ordered.

DELIVERED, DATED AND SIGNED AT BUSIA THIS 22ND DAY OF NOVEMBER 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

