

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL REVISION E007 OF 2022

REPUBLIC.....APPLICANT

VERSUS

MAXWELL ODONGO.....RESPONDENT

R U L I N G

In her letter dated 17/3/2022 the trial magistrate notes that the matter came up for plea in court 6 and when it came before her for the first time on 23rd December 2021, she was notified by the defence counsel that they had received copies of witness statements and were ready to be given a hearing date. The matter thus proceeded on the presumption that plea had been taken and in the process five witnesses testified before the trial court only for it to realize during the cross-examination of PW 5 that plea was not taken. The trial court reckoned that a grave mistake had occurred and therefore referred the matter to this court for direction on how to proceed from that point.

A perusal of the lower court record by this court reveals that the plea was indeed taken on 2nd December 2021, before the learned Resident Magistrate **Hon. R.N. Nganga** and the accused **Maxwell Odongo Clifford** actually pleaded guilty to the charge.

The matter was thereafter fixed for facts on 9th December 2021 on which date the accused was not produced. The next mention date was 14th December 2021 on which date the accused was again not produced. The matter was pushed forward to the 22nd December 2021, on which date learned Counsel **Mr. Ouma** was placed on record as appearing for the accused and matter adjourned to 23rd December 2021 on which date the accused and his advocate appeared before the current trial magistrate **Hon. P.Kulecho** presumably for the facts of the case to be given by the prosecution for confirmation or otherwise by the accused. However, that was not to be so as the trial court fixed the matter for hearing on 10th February 2022 and admitted the accused to a bond of ksh.50,000/= with a similar surety.

On the appointed 10th February 2022, things went south. Instead of the prosecution giving the facts of the case upon the accused's plea of guilty, the trial court commenced the hearing of the case and took the evidence of three prosecution witnesses before adjourning the matter to 15th March 2022. All these, oblivious of the fact that the accused had already taken plea and entered a plea of guilt.

The state of affairs created by the turn of events indicated that whereas the accused had pleaded guilty the matter proceeded to hearing as if he had pleaded not guilty.

The resultant effect of the lapse amounted to nothing short of a mistrial.

In the circumstances, there must be a “**re-boot**” of the case with the matter being restarted afresh from the plea taking stage onwards but before a different trial court of competent jurisdiction. Accordingly, the proceedings of the lower court from the 2nd December 2021 to the 15th March 2022, be and are hereby set aside for the matter to start “*de-novo*”.

Ordered accordingly.

J.R. KARANJAH

J U D G E

23/3/2022