

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION CASE NO. E071 OF 2021

ERICK OCHIENG NYADEGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Application for sentence revision in UKWALA SRM'S MAGISTRATES COURT

NO. 308 OF 2019 on 5.8.2019 by Hon. C.I. Agutu – Senior Resident Magistrate)

RULING

1. The applicant Erick Ochieng Nyandegge is serving 3 years **imprisonment for Burglary and Stealing**. He was only sentenced on one limb. He is alleged to have pleaded guilty to the charges on 5.8.2019 before Hon. C.I. Agutu, Senior Resident Magistrate.

2. However, my perusal of the proceedings for that day reveal that after the accused said "**Ni Ukweli**," upon facts being read out to him, no plea of guilty was entered against him. Although a plea of guilty was entered only after facts were read out to the applicant, no conviction was entered against him which is a serious irregularity.

3. The accused was a previous offender in Criminal Case Number 188 of 2019 of being in a dwelling house with the intention to commit a felony. That notwithstanding, the plea as taken was fatally defective. It cannot stand. The proceedings of 5.8.2019 having been irregularly conducted, the same are hereby quashed and the 3 years imprisonment imposed on the applicant is hereby set aside. The applicant has served a substantial part of the sentence as imposed on 5.8.2019 on one count only.

4. A retrial will not be in the interest of Justice. Therefore, unless otherwise lawfully held, subject to the proceedings in Ukwala Senior Resident Magistrate Criminal 186 of 2019, the applicant shall be set at liberty as far as the proceedings in Ukwala SRM Cr. 308/2019 are concerned.

5. Orders accordingly.

6. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 25TH DAY OF JUNE, 2021

R. E. ABURILI

JUDG