



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL REVISION NO. E056 OF 2021

CORAM: R.E. ABURILI, J

RAPHAEL ONYANGO OTIENO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Ukwala PM Court's Criminal Case No. 424 of 2020

on 02/11/2020 Hon. C.I. Agutu, Senior Resident Magistrate)

RULING

1. The applicant is Raphael Otieno Onyango. He is aged 35 years old and is serving a one year prison term in default of a fine of Kshs. 300,000/= for the offence of possessing 320 litres of kangara used to manufacture changaa. This is according to the charge sheet dated 28/9/2020.
2. When he appeared for Plea before Hon. C.N. Sindani, Senior Resident Magistrate Ukwala Law Courts on 8/9/2020, he pleaded not guilty to the charge. However, on 2/11/2020 when he appeared Hon. C.I. Agutu, Senior Resident Magistrate, he asked that the charges be read to him afresh and he admitted the charge as read to him in Dholuo.
3. The 2½ sentence/lines facts were read out to him and the Kangara and Government Analyst report were produced as exhibits and he is said to have stated: **facts are true.**
4. The court then recorded: **"Plea of guilty is entered"**. Aafter the prosecutor stated that there were no previous records, the court asked accused to mitigate which he did, and he was sentenced. **There is no conviction entered against the accused person.**
5. The case had been fixed for hearing on 27/10/2020 and on the latter date, Hon. Sindani fixed it for hearing on 1/11/2020. There is no record of proceedings or what could have transpired on 1/11/2020 instead, the matter came up for hearing on 2/11/2020.
6. I find the proceedings of 2/11/2020 to have been irregularly conducted as there was no conviction of the accused person hence there is no basis for the sentence imposed.
7. As exhibits are likely to have been destroyed as ordered by the trial magistrate, a retrial would be in vain.
8. Accordingly, I quash the proceedings of 2/11/2020 conducted by Hon. C.I. Agutu, Senior Resident Magistrate and set aside the fine of kshs 300,000 imposed on the accused/applicant and in default the 2 years prison term.
9. Unless otherwise lawfully held, Raphael Onyango Otieno is hereby set at liberty forthwith.
10. Filed closed.
11. Orders accordingly.

Dated, signed and Delivered at Siaya this 25th Day of June, 2021.

R.E. ABURILI

JUDGE