



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. E023 OF 2021

CORAM: R.E. ABURILL, J

JAMES OUMA MUGANDA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Ukwala PM Court’s Criminal Case No. 117 of 2021 on 22/2/2021 by Hon. C.I. Agutu, Senior Resident Magistrate)

RULING

1. The 1st accused person in Ukwala Senior Resident Magistrate Criminal 117/2021 is James Ouma Muganda. He was charged jointly with Charles Odhiambo Okoth with the offence of trafficking narcotic drugs contrary to Section 4(a) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994.
2. He was arraigned on 22/2/2021 before Hon. C.I. Agutu, Senior Resident Magistrate Ukwala for Plea taking. The charge was read out to him in Kiswahili language and he replied. **“Ni ukweli”**. Thereafter, the proceedings that followed are as follows:

2nd accused: “Si ukweli”

Court: 1st accused - Plea of guilty is entered.

1st accused: Fine of Kshs. 100,000/= (one hundred thousand) in default one year imprisonment at Siaya G.K. prison.

Right of appeal allowed.

Signed

22/2/2021

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3. In respect of the second accused, proceedings continued and his case is due for hearing on 15/7/2021.
4. The charge sheet reads that on 21/2/2021 at 12.30 hours in Sigomere Trading Centre, Sigomere sublocation, Ugunja sub-county within Siaya County, the accused were jointly found trafficking two brooms of cannabis sativa (bhang) on Motorcycle Reg. KMCK 311B SKYGO.
5. The file is before me for prison decongestion exercise with a Probation officer’s report filed on 15/9/2021 by Milton Kasera recommending community service order for the 1st accused at Sigomere Health Centre as the inmate is nonviolent and partakes alcohol. His father is a staunch Christian adherent of Roho Israel Church willing to help him settle at home. He is separated with his wife and child Hon. C.I. Agutu Senior Resident Magistrate and the Probation Officer’s report.
6. I am perturbed by these kind of proceedings emanating from an honourable magistrate whom I have personally taken the liberty to speak to during station supervisory visits and meetings held with judicial officers in Siaya County since my posting to this station. I have written several judgments on appeal and rulings on revision and directed that the judgments and or rulings be served upon the Hon. Magistrate to aid her in Plea taking and conduct of criminal proceedings but all this has been in vain.

7. Yet again, here I am faced with a stranger than fiction proceedings where a Plea is taken, the accused pleads guilty to the charge, no facts are read out to him, no entry of any conviction, no past records or address by the prosecutor, no exhibit produced by alleged trafficking of narcotic drugs but the accused is fined Kshs. 100,000/= on the spot and in default to service one year imprisonment.

8. The accused has been in prison for 4 months now without any facts or conviction. I find the proceedings of 22/2/2021 fatally defective and irregular. The sentence imposed is devoid of any basis.

9. I quash the proceedings as conducted against the applicant herein and set aside the sentence of a fine of Kshs. 100,000/= in default, 1 year imprisonment imposed on the accused James Ouma Muganda.

10. Unless otherwise lawfully held, the 1st accused/applicant James Ouma Muganda is hereby set at liberty forthwith.

11. This ruling to be served on Hon. C.I. Agutu Senior Resident Magistrate, personally for noting as has been the norm in many other such matters. Original file to be returned to Ukwala Law Courts forthwith to facilitate hearing in respect of the second accused person.

12. This File is closed.

13. Orders accordingly.

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

R.E. ABURILI

JUDGE