



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT SIAYA
CRIMINAL REVISION NO. E052 OF 2021
CORAM: R.E. ABURILI, J
KOO.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Ukwala SRM Court's Criminal Case No. 486 of 2020 on 04.11.2020 by Hon. C. I. Agutu, Senior Resident Magistrate)

RULING

1. I have considered the application for revision of sentence imposed on the convict KOO vide Ukwala Senior Resident Magistrate Criminal Case No. 486 of 2020 for the offence of Assault causing actual bodily harm contrary to Section 251 of the Penal Code and Malicious damage contrary to Section 339(1) of the Penal Code.
2. I observe that the convict was sentenced to a fine of Kshs. 50,000/= in default to serve one year in prison, in count one and in count 2, he was sentenced to pay a fine of Kshs. 10,000/= in default to serve six months imprisonment. The sentences to run concurrently. This was on 4/11/2020.
3. I further observe that the convict/applicant and the complainant are husband and wife though the complainant has since left her matrimonial home and returned to her home, leaving behind three minor children who are said to be under the care of their paternal grandmother.
4. The convict pleaded guilty to the charges (2 counts) as read to him on 9/10/2020 upon which the trial court - Hon. C.I. Agutu, Senior Resident Magistrate, called for a Probation Report, which report was filed on 30/10/2020. The said report prepared and signed by Cornel Kirui Towet recommended that the offender was suitable for probation sentence for a reasonable period. The trial court exercised discretion and sentenced him to fines and in default, to service prison terms as stated. The sentences as imposed are not harsh or excessive and are within the law for the offences charged.
5. The question that I must pose, however, is, whether the Plea as taken of guilty was unequivocal.
6. For a Plea of guilty to have been unequivocal, the charge(s) must disclose an offence. The facts too must disclose an offence charged. The Plea must be taken - or the charge(s) read out to the accused persons in a language that he understands. There must also be a conviction entered and recorded.
7. In the instant case, whereas the sentences imposed on the applicant are lawful, and whereas the language used in the Plea taking is indicated as Kiswahili, with the applicant/accused responding: *"Ni ukweli"*, on both counts after the facts were read out to him, with no indication whether they were read out to him in Kiswahili or other language, the accused is recorded to have replied, *"it is true"- in English.*
8. The question is whether the facts were read out to the accused person in Kiswahili or English for him to respond in English and not in Kiswahili, the language that the charges were read out to him.
9. In addition to the above observation, the trial magistrate did not enter any Plea of guilty upon the accused person 'pleading guilty' to the two counts as read out to him.
10. Further, after the facts were read out to the accused and he said, *"it is true"*, there was no conviction entered. The trial magistrate

proceeded to ask him for mitigation and the proceedings are as follows, in summary:

“9/10/2020

Before Hon. C.I. Agutu, Senior Resident Magistrate

Accused: present

Court: Charges read over to the accused in Kiswahili language which he professes to understand.

1st court: Ni ukweli

2nd court: Ni ukweli

Facts: (read out and recorded)

Accused: It is true.

Accused: In mitigation: I pray for forgiveness.

Court: Mitigation considered.

Court: Probation Report on 23rd October 2020.

Signed

C.I Agutu

Magistrate

8.10.2020”

11. In the facts read out to the accused, there is no production of a P3 form as evidence that the complainant was treated for the injuries sustained. However, in the file, a P3 form is present marked as Exhibit 1. There is no mention in the facts of “what” injuries the complainant sustained upon being beaten and or where she was beaten.

12. In addition, there is no mention of “what” property belonging to the complainant was destroyed or damaged, to support count two of malicious damage to property.

13. In count one, even if the injuries sustained were not mentioned in the facts, it is expected that the facts refer to injuries as per the P3 form produced as an exhibit and production by the prosecution. The facts only say, “**...you beat her. She came back and found you had destroyed her property. She was treated and P3 form filled**”.

14. In my humble view, the Plea was not unequivocal. Further, the facts as read out did not disclose the offences charged. In addition, there being no plea of guilty being entered against the accused and no entry of a conviction of the applicant, there was no basis upon which the applicant was sentenced to a fine and or prison terms in default. Moreover, there is no indication whether the accused was a first or repeat offender.

15. The proceedings of 9/10/2020 were fatally null and void. The applicant has been in prison since 7/10/2020 when he was arrested which is now eight months. He has served a sentence that was based on void proceedings which proceedings I hereby quash and the sentences imposed on the applicant on 4/11/2020 is set aside.

16. Therefore, unless otherwise lawfully held, the applicant KOO is hereby set at liberty forthwith.

17. The trial court file and this Ruling be returned to Ukwala Law Courts and copy of Ruling be served upon Hon. C.I. Agutu personally for noting.

18. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 24TH DAY OF JUNE, 2021

R.E. ABURILI

JUDGE