

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

[Coram: A. C. Mrima, J.]

CRIMINAL REVISION NO. 40 OF 2020

PHILIP AGERE ADERA.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. This revision is in respect of *Migori Chief Magistrates Criminal Case No. 217 of 2019 Republic vs Philip Agere Adera* (hereinafter referred to as "**the criminal case**").

2. The accused person in the criminal case, one Philip Agere Adera, was charged with the offence of stealing stock contrary to **Section 278** of the **Penal Code**. He denied the charge and was tried.

3. At the close of the prosecution case the trial court rendered a ruling on whether the prosecution had established a *prima-facie* case so as for the accused person be placed on his defence. That was on 13/11/2019.

4. In a brief ruling the court delivered itself as follows: -

14. There is only one option available to a trial court under **Section 210** of the Criminal Procedure Code. It is to dismiss the case and acquit the accused person. A trial court cannot therefore place an accused person on his/her defence under **Section 210** Criminal Procedure Code. That is the preserve of **Section 211(1)** of the Criminal Procedure Code.

15. The error is therefore not a superficial one. It runs through to the heart of a fair trial. A court invoking **Section 210** of the Criminal Procedure Code and failing to acquit an accused person occasions a failure of justice. **Article 50** of the **Constitution** guarantees the right to a fair trial. The right to a fair trial includes the right of an accused person to be tried within the confines of the law. Placing an accused person on his defence under a wrong provisions of the law therefore contravenes the right to a fair trial and renders the trial a nullity. It is an error which cannot be cured under **Section 382** of the **Criminal Procedure Code**.

16. The Accused person in the criminal case was yet to be present his defence.

17. In the circumstances, in order to uphold the rule of law and ensure a fair trial is rendered to the parties the following orders do issue: -

a) **The ruling delivered on 13/11/2019 placing the accused person on his defence under Section 210 Criminal Procedure Code be and is hereby set-aside and vacated;**

b) **The court now seized of the Migori Chief Magistrates Criminal Case No. 217 of 2019 Republic vs Philip Agere Adera shall proceed to review the prosecution evidence and render a ruling on whether the accused person ought to be placed on his defence, subject to compliance with Section 200 Criminal Procedure Code, if not yet. For avoidance of doubt, this ruling shall not sanction the re-opening of the prosecution's case.**

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 25th day of February, 2020

A. C. MRIMA

JUDGE