



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL REVISION NOS. 74, 76, 77, 78, 79 & 80 OF 2020

REPUBLIC.....PROSECUTOR /APPLICANT

VERSUS

JOHN MUKWIRA.....1ST ACCUSED/RESPONDENT

DENNIS SIMIYU.....2ND ACCUSED/RESPONDENT

JEREMIAL MUHESO.....3RD ACCUSED/RESPONDENT

JOHN RUSHURU4TH ACCUSED/RESPONDENT

MUSERA RATIA.....5TH ACCUSED/RESPONDENT

PETER LONGISA.....6TH ACCUSED/RESPONDENT

(Being revision arising from the judgement of Hon G. Wakahiu, Chief Magistrate, delivered on 18/05/2020 in Criminal Case No. 176 of 2020 in the Chief Magistrate Court at Narok, R. v. John Mukwira & 5 Others)

ORDER IN REVISION

1. The Hon. Chief Magistrate has reported the above matter for revision by this court, following his order of conviction and sentence of a fine of Kshs 2,000/= in default to serve one-month imprisonment recorded against each accused/respondent.
2. The respondents were charged with contravening the provisions for the prevention or suppression of covid 19 contrary to Rule 6 (1) (b) as read with Rule 6 (3) and pursuant to the Public Health Covid 19 Restriction of movement of persons and related measures Rule 2020.
3. The respondents were convicted on their own pleas of guilty and sentenced to a fine of Kshs 2,000/= in default to serve one-month imprisonment.
4. The particulars of the charge were that each respondent failed to wear a face mask, while walking in Narok township.
5. The charge sheet shows that it was signed by the OCS Narok police station. Thereafter, it was approved by the Office of the Director of Public Prosecutions, Narok county.
6. The facts upon which the convictions were entered were that the respondents were found in Narok township on 16/5/2020 by police officers from Narok police station, who were on patrol. The police officers were enforcing the curfew orders. They were arrested and charged.
7. Following their conviction, the respondents mitigated as follows.
8. In his mitigation, the 1st respondent stated that: *"I had the mask but in my hand."*
9. In his mitigation the 2nd respondent told the court that: *"I had forgotten at the house, I will not forget again."*

10. In his mitigation the 3rd respondent told the court that: *“I had worn it half-way. I ask for forgiveness”*

11. In his mitigation the 4th respondent told the court that: *“I was alighting from a lorry. I had not worn it.”*

12. In his mitigation the 5th respondent told the court that: *“I will not repeat.”*

13. In his mitigation the 6th respondent told the court that: *“I ask for forgiveness”*

15. The law required the Hon. Chief Magistrate to indicate the reasons for requesting the High Court to revise his orders. This would enable the High Court as the revising court to see the basis of the request for revision of his orders at a glance. See **generally Uganda v Welli [1966] EA 324**. The learned Hon. Chief Magistrate failed to indicate the reasons why it was necessary to have his orders revised in terms of section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya. This requirement is important in the interests of expeditious disposal of the matters reported for revision.

15. Furthermore, the law also required the trial court to inform the respondents the consequences of pleading guilty including the penalties to be imposed before recording the order of conviction. This also was not done.

16. In the light of the foregoing errors committed by the trial court, I find that the orders of conviction and sentence are contrary to the law and they are hereby set aside with the result that the respondents are hereby ordered set free unless held on other lawful warrants.

17. If the monetary fines were paid, they should be refunded.

Order signed, dated and delivered at Narok this 17th day of June, 2020 in the absence of both the applicant and the respondent.

J. M. BWONWONG’A.

J U D G E

17/06/2020.