



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARSEN**

**CRIMINAL REVISION NO. E002 OF 2020**

**MUHAMUD ABDI DABAR**

**HUSSEIN RASHID DHIDA....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**Coram: Justice Reuben Nyakundi**

**Applicant in person**

**Mr. Mwangi for the State**

**RULING**

This revision on sentence has been filed by the state following a conviction and sentence of the convicts for the offence of trespass upon private land contrary to Section 3 (1) as read with Section (11) of the Trespass Act Cap 294 of the Laws of Kenya.

In the applicant memorandum to this Court, the Learned trial Magistrate erred in Law when he passed a sentence of a fine of Kshs.50,000/= on Count 2, 3, 5, 6, 7, and 8 in default to serve (2) two months imprisonment.

Further, the Learned trial Magistrate made the following order:

**“For avoidance of doubt the accused’s were by sentenced to pay a fine of Kshs.300,000/=.”**

**Determination**

It is not in dispute that the convicts were charged, tried and convicted for the offence of trespass upon private land contrary to Section 3 (1) as read with (11) of the Trespass Act. In case of a conviction, the statute provides for a sentence of Kshs.500/- or to imprisonment for a term not exceeding two months or to both such fine and imprisonment.

Given the above provisions and on what later transpired at the trial Court, I am in agreement with the prosecution counsel that the Learned trial Magistrate failed to appreciate the letter of the process on sentence for the offence of trespass upon private property. The sentence of fine of Kshs.50,000/= or the quantified 300,000/= by itself was illegal, irregular incorrect and unjust with no legal basis.

To that extent, I am viable to find any justification which motivated the Learned trial Magistrate to impose an illegal sentence outside the stipulated fine and period of imprisonment.

In exercise of supervisory and revisionary jurisdiction premised in Article 165 (6) and (7) of the Constitution as read with Section 362 of the Criminal Procedure Code. I am subjected that the illegality and impropriety of the sentence cannot be permitted to stand as it prejudiced and occasioned an injustice to the convicts. From the record its difficult to appreciate the position of the Learned trial Magistrate on this point.

Furthermore, the grounds in each memorandum raised by the applicant are not curable within the terms of Section 382 of the Criminal Procedure Code, so the Learned Magistrate in my respectful view, the sentence imposed occasioned an injustice. Exercising the powers of the Court under the revisionary jurisdiction, I purpose to set aside the sentence of Kshs.50,000/= for the respective counts and cumulative

quantum of Kshs.300,000/= for being illegal and wrong in Law. The same is substituted with a fine of Kshs.500 in default 2 months imprisonment.

To this extent, the revision is allowed.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2020**

.....

**R. NYAKUNDI**

**JUDGE**

**In the presence of:**

1. Mr. Mwangi for the state