

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL REVISION CASE NO. 28 OF 2019

CATHERINE WAWIRA NYAGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. This file is before me for revision under the powers conferred to this court under Section 362 and 364 of the Criminal Procedure Code. The reference letter by the trial magistrate seeks for orders for correction of her orders made on 4/09/2019 inadvertently.

2. On perusal of the file, it is noted that the accused was charged with the offence of threatening to kill contrary to Section 223 of the Penal Code which offence she pleaded not guilty.

3. The trial court on 2/02/2019 directed that a pre-bail report be filed for purpose of consideration for release on bail.

4. The probation officer prepared and filed a pre-sentence report instead of a pre-bail report. On 4/09/2019, the matter was mentioned by Hon. Ndeng'eri who received the pre-sentence report and proceeded to sentence the accused. The honorable magistrate placed the accused on probation for a period of one (1) year.

5. Thereafter, the court noted that there was a mistake since the accused had never pleaded guilty to the offence and had not been tried or convicted of the offence.

6. I have considered the circumstances in this case and the inadvertent mistake on part of the honourable magistrate. I find that this is a suitable case for correction of the mistake which resulted in the wrong orders being issued.

7. I therefore invoke the powers of this court under **Section 362 and 364 of the Criminal Procedure Code** and make the following orders: -

a. That the orders made by the court on 4/09/2019 are hereby set aside.

b. That this file is hereby referred to the trial court for further orders on 24/10/2019.

8. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 23RD DAY OF OCTOBER 2019.

F. MUCHEMI

JUDGE