

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. 353 OF 2018

RASHID MWERO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. The lower court file has been availed for perusal as ordered on the 16/7/2018. Having perused the same I do find that:-

i) The plea was never validly entered because the accused having said it is 'true' to all the counts, the prosecution was never called upon to state the facts of the offence as to enable the accused to consider changing or confirming his plea. That was to this court in violation of the provisions of 207(2) & (3) Criminal Procedure Code as explained in the decision of *Aden vs Republic [1973] EA 445*.

ii) In addition even if the plea of guilty was validly entered, the accused person had a right to offer mitigation before the sentence was metted out. That was not availed to him.

2. Those flaws in the proceedings, are enough for me to find that the proceedings were not regularly conducted and that the accused should be accorded another chance to have his plea regularly recorded. This is a matter that calls for a retrial.

3. However in this case, I note that the accused person has served some 15 days out of the aggregate 2 months imprisonment metted. That when taken together with the nature of the offences charged, I do consider that the accused has learnt his lesson.

4. I am minded to release him forthwith but on conditional discharge that he shall not commit a related offence for the next twelve months.

5. It is so ordered.

Dated and delivered at Mombasa this 25th day of July 2018.

P.J.O. OTIENO

JUDGE