



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL REVISION NO. 2 OF 2017**

**BMW.....APPELLANT**

**VERSUS**

**REPUBLIC .....PROSECUTOR**

**RULING**

The accused person **B M W** was charged at Baricho Principal Magistrate's Court with the offence of failing to take tuberculosis drugs contrary to Section 26 as read with Section 28 (c) of the Public Health Act Cap 242 Laws of Kenya.

It was alleged that from 17<sup>th</sup> August, 2015 up to 20<sup>th</sup> September, 2015 at *Particulars withheld* Kirinyaga West District within Kirinyaga County he failed to take tuberculosis Drugs as prescribed by a medical officer at Sagana Sub District hospital, thus exposing members of the public to dangers of contracting the disease.

The accused admitted the charge and the Court ordered that he be committed to Kerugoya G. K. Prison for Tuberculosis treatment for 20 months. The accused has undergone treatment. The matter was referred to this Court for review of the sentence.

Section 26 of the Public Health Act Supra provides for removal to hospital of infected persons.

*“Where in the opinion of the medical officer of health, any person certified by a medical practitioner to be suffering from an infectious disease is not accommodated or is not being treated or nursed in such a manner as adequately to guard against the spread of disease such person may on the order of the medical officer of health be removed to a hospital or temporary place.....until such medical officer of health.....is satisfied that he is free from infection, or can be discharged without danger to the public health.*

From the record of the lower Court, the County Director of Health informed the Court that the accused had completed treatment. The letter dated 3<sup>rd</sup> April, 2017 from the County Director of Health confirms that the accused was progressing well with treatment and is almost to complete treatment of 20 months on 16<sup>th</sup> April, 2017. That he is no longer a threat to the community. The above provision shows that the accused can only be detained so that he can undergo treatment. It is also meant to ensure that the accused does not pose a rise to infecting other members of the public. It is meant to be a temporary detention which will be terminated upon confirmation that he is free from infection and no danger will be posed to the public.

According to the letter quoted above, the accused has undergone treatment and is no longer a threat to the public. There is therefore no need of his continued detention. The State has no objection to the sentence being reviewed. I will therefore review the sentence under Section 364 (a) of the Criminal Procedure Code and order that the sentence of twenty (20) months is reduced to the period served. The accused be released forthwith.

***Dated and delivered at Kerugoya this 21<sup>st</sup> day of April, 2017.***

**L. W. GITARI**

**JUDGE**

21.4.2017

Ruling read out in open Court, in the presence of accused, Mr. Sitati for  
State and Court Assistant Naomi Murage this 21<sup>st</sup> day of April, 2017.

L. W. GITARI

JUDGE

21.4.2017