

REPUBLIC OF KENYA

IN THE HIGH COURT OF MERU

CRIMINAL REVISION NO 96 OF 2017

JAMES KAUNGAAPPELLANT

-VS-

REPUBLICRESPONDENT

JUDGMENT

[1] The Applicant was charged with the offence of interfering with demarcated land boundary features contrary to Section 33(d) of the Land adjudication Act CAP 284 Laws of Kenya. The case was heard and on 4th May 2017, the trial Magistrate sentenced the Appellant to one year imprisonment.

[2] In the committal warrant it was erroneously stated that the Applicant was charged under section 23(a) of The Land Adjudication Act CAP 284. This is just an error on the part of the person who prepared the committal warrant because the charge sheet was amended to read Section 33(d) of the Land adjudication Act CAP 284 Laws of Kenya. Nothing turns on this error.

[3] I move to other potent grounds namely;-

(a) That the sentence is illegal for being contrary to section 33(d) of the Land adjudication Act CAP 284 Laws of Kenya;

(2) The trial magistrate did not call for mitigating reports

[4] The substantive as well as the penalty provision is Section 33(d) of the Land adjudication Act CAP 284 Laws of Kenya which states that;

33 “Any person who-

(d) without reasonable excuse interferes with any demarcated boundary, or defaces, removes, injures or otherwise impairs any feature of a demarcated boundary, or allows any demarcated boundary to fall into disrepair...

shall be guilty of an offence and **liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment...**”

Accordingly, a jail term of one year is clearly illegal. I will therefore, substitute the sentence to a fine of Kshs. 3, 000 in default he shall serve three (3) months imprisonment. The sentence imposed by the trial magistrate is hereby set aside. It is so ordered.

Dated, signed and delivered in open court at Meru this 31st day of May 2017.

F. GIKONYO

JUDGE