



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITUI**  
**CRIMINAL REVISION CASE NO. 6 OF 2017**

MUTUKU SOLO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**R U L I N G**

1. By a letter dated 11<sup>th</sup> July, 2017, Mutisya & Co. Advocates seek Revision of the conviction and sentence meted out by Hon. J. M. Munguti against Mutuku Solo, who was charged with the offence of **Creating a Disturbance in a Manner Likely to Cause the Breach of the Peace** contrary to **Section 95(1)(b)** of the **Penal Code**. Particulars of the offence were that on the 5<sup>th</sup> day of **July, 2017** at **Yatta Location** in **Lower Yatta Sub-County** within **Kitui County** created disturbance in a matter to cause the breach of peace by throwing stones on the wall and the roof of **Josephine Nduku Mukai**.

2. It is argued that the plea taken was not unequivocal as the process adopted by the learned trial Magistrate did not conform to the laid down standard.

3. I have considered issues raised and the record of the Lower Court.

4. The steps to be followed by a Court when taking plea were stated in the case of **Adan vs. Republic (1973) EA 445** as:

*“(i) The charges and all essential ingredients of the offence should be explained to the accused in his language, or a language which he understands;*

*(ii) the accused’s own words should be recorded and, if they are an admission, a plea of guilty should be recorded;*

*(iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain facts, or to add any relevant acts;*

*(iv) If the accused does not agree to the facts or raises any question of his guilt his reply must be recorded and change of plea entered; and*

*(v) If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused reply should be recorded.” (Also see Section 207 of the Criminal Procedure Code).*

5. In the instant case when the charge was read the Accused admitted. Facts were presented thus:

***“On 5<sup>th</sup> July, 2017 at around 2.00 p.m. the complainant was sleeping in her house when the accused went there and threw stones on her roof. He was saying the complainant must leave the compound claiming they had no right to be there. The accused was reported to Kiusyani Police Station. Accused was arrested.”***

The Accused stated thus:

***“Facts are correct.”***

The Accused did confirm that the facts as presented by the Prosecution were correct. The question to be considered is whether the facts as stated disclosed the offence of creating a disturbance?

6. The Accused was stated to have committed an offence contrary to **Section 95(1)(b)** of the **Penal Code** that provides thus:

***“(1) Any person who—***

***(b) brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace, is guilty of a misdemeanour and is liable to imprisonment for six months.”***

In the case of **Mule vs. Republic Criminal Appeal No. 873 of 1982** it was stated thus:

***“(1) The offence of creating a disturbance likely to cause a breach of the peace constitutes incitement to physical violence and the breach of the peace contemplating physical violence.....***

***2) It is not enough to constitute the offence of creating disturbance likely to cause a breach of the peace to show that the accused merely created a disturbance. That disturbance should have been likely to cause a breach of peace. Peace would, for instance refer to the right of wananchi to go about their daily activities without interference. The actions of the appellant interfered with people’s activities and therefore caused a breach of peace.”***

7. The facts as presented suggested that the Accused did an act that was annoying. The act of throwing stones on the roof of the Complainant, his utterances that the Complainant had no right to be there may have been disturbing. But there is no suggestion that there were people present who were likely to resort to violence. It is not even stated that the Accused was likely to cause a breach of peace.

8. The interpretation of the facts cannot amount to a person having been guilty of the offence of creating a disturbance in a manner likely to cause a breach of peace.

9. Therefore even if the Accused stated that facts were correct, the learned Magistrate was duty bound to interrogate whether that amounted to an admission of having committed the alleged offence.

10. According to **Section 348** of the **Criminal Procedure Code** a person who admits an offence is only supposed to question the legality of sentence but where a plea is equivocal the conviction cannot stand as it is a nullity. In the circumstances I do hereby quash the conviction and set aside the sentence imposed.

11. The maximum sentence stipulated for the offence is **six (6) months imprisonment**. Having served **one (1) month imprisonment**, in the interest of justice no retrial should be ordered. In the premises the offender will be set at liberty unless otherwise lawfully held.

12. It is so ordered.

**Dated, Signed and Delivered at Kitui this 23<sup>rd</sup> day of August, 2017.**

**L. N. MUTENDE**

**JUDGE**