



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO.26 OF 2017**

MOSES KIMANI THUO.....1<sup>ST</sup> APPLICANT

SADISON WANJOHI NJOROGE.....2<sup>ND</sup> APPLICANT

- V E R S U S -

REPUBLIC.....RESPONDENT

**REVISION ORDER**

This case has been placed before me for purposes of revision. The two accused, Moses Kimani Thuo and Sadison Wanjohi Njoroge appeared before Hon. J. Wanjala C.M. for plea on 13/9/2017 whereby they were charged with the offence of entering into a national park without a permit Contrary to Section 102(1)A of the Wildlife Conservation and Management Act, 2013, Laws of Kenya.

When the plea was read to the accused persons, the court recorded that the accused persons replied '*it is true*'. The prosecution did not offer any facts but instead the court recorded '*facts as per charge sheet*'. The court went ahead to convict the accused and they were allowed to mitigate. The court then fined the accused Kshs.200,000/= each in default two years imprisonment.

It is obvious that the court did not take the plea as is required of it because the facts were never read to the accused persons to ascertain whether or not the facts supported the charge and therefore whether the plea was unequivocal.

The case of *Adan v Republic (1973) EA 445* clearly sets out the steps to be taken in taking of a plea. The court held:

- (i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in 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 the facts, or to add any relevant facts;***
- (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's reply should be recorded.***

The court went ahead and sentenced the accused to a fine of Kshs.200,000/= in default 2 years imprisonment. The sentence was quite harsh. That is the more reason why the facts should have been read to the accused to determine whether indeed the understood the magnitude of the charge.

I find that the plea was equivocal for lack of facts and it should not be allowed to stand. I hereby revise it, quash the conviction and set aside the sentence.

The accused were sentenced on 14/9/2017, only 2 months ago. I direct that the matter be remitted back to the lower court before any other magistrate other than the Chief Magistrate, J. Wanjala for taking of fresh plea. It is so ordered.

**Signed and Dated at NYAHURURU this 15<sup>th</sup> day of December 2017.**

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**R.P.V. Wendoh**

**JUDGE**