



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL APPEAL NO. 2 OF 2015**

**(FORMERLY MARIMANTI COURT CRIMINAL CASE NO. 652 OF 2014)**

PETER MUTUNDU GAICHU.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

**RULING ON REVISION**

1. On 2<sup>nd</sup> October, 2014, Peter Mutundu Gaichu (“the convictee”) was charged before the Principal Magistrate’s Court Marimanti with the offence of malicious damage to property contrary to section 339(1) of the Penal Code. It was alleged that on the 11<sup>th</sup> day of September, 2014 at Kamanyaki Village Kamanyaki Location Tharaka South District within Tharaka Nithi County, the convictee damaged three Mango trees valued at Kshs.14,850/= the property of Joseph Itumbi Makembo.
2. When called to plead to the charges, the convictee stated “it is true. I had cut one tree.” The court thereupon rightly entered a plea of not guilty and the matter proceeded to trial. After full trial, the court found the convictee guilty of the offence, convicted him of the same and sentenced him to a fine of Kshs.20,000/= or six months in prison. That sentence was metted out on 30<sup>th</sup> June, 2015. By a letter dated 3<sup>rd</sup> December, 2015, the Senior Resident Magistrate, Marimanti notified this court that after the said trial, conviction and sentence, the court discovered that the convictee had a mental condition. That this court should therefore review the said sentence.
3. I have perused the entire record. I note that the report of the psychiatrist was made on 17<sup>th</sup> September, 2015 when the convictee was already serving the sentence. If that was the only evidence on record, this matter would not have been proper for review as it is not established as to when the mental condition befell the convictee. However, a keen perusal of the record will show that as early as the 2<sup>nd</sup> of October, 2014 after the convictee had taken his plea, the prosecutor brought to the attention of the court the condition of the convictee. He is recorded to have stated:-

***“The accused has been in this court. He has a mental problem. I have no objection for the accused to be given a personal bond.”***

4. Further, a reading of the proceedings will show that his cross-examination of the prosecution witnesses and in his own defence, the convictee may not have had a proper thought process. This coupled with the observation of the Probation Officer who prepared the Probation Report dated 30<sup>th</sup> June, 2015, suggest that the accused may not have been free of the mental condition from the time he took the plea. That being the case, not only the sentence that is irregular but the entire proceedings. The proceedings may have been in breach of Section 162 of the Criminal Procedure Code. If a person is not capable of taking a plea, mutatis mutandis he cannot be capable of participating in a trial.
5. Accordingly, I find that the trial of the convictee to have been irregular. He was not capable of taking the plea and undergo the subsequent trial. This matter was brought to the attention of this court on 7<sup>th</sup> January, 2016 during the vacation. The sentence of 30<sup>th</sup> June, 2015 was to terminate

on 30/12/2015. The convictee may have already served the sentence by that time. Nevertheless, the proceedings conviction and sentence may not have been regular in view of the holding of the Court of Appeal in the Case of *Karisa Masha-vs-Republic[2015] eKLR.*

6. In view of the foregoing, I do not think that it will be just to let the proceedings and conviction stand. Since the same may have been proceeded on the presumption that the convictee was of same mind (see Section 9 of the Penal Code) which presumption has been rebutted by the Medical Report dated 17/9/2015 and as aforesaid, the said proceedings cannot stand. Accordingly, the said proceedings are hereby set aside; the conviction quashed and sentence set aside. Since the convictee has already served the sentence, I will make no orders under Section 162 of the Criminal Procedure Code.

**Dated and delivered at Chuka this 07<sup>th</sup> day of January, 2016.**

**A. MABEYA,**

**JUDGE.**