



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL REVISION NO. 131 OF 2016

EDWARD KINYUA KAMWEA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

31/3/2016

Before Muchemi, J.

COURT

This file was forwarded to me for revision under Section 362 and 364 of the Criminal Procedure Code. The trial magistrate in her letter dated 30/03/2016 states that the conviction of the accused in the five counts was made on the mistaken belief that the plea had been taken earlier by the court which dealt with the file.

I have perused the court file and noted that the accused was charged with one count of the offence of disobeying a lawful order and four other counts of failing to attend court on diverse dates.

The matter went before Hon. Mutai who referred it to Court No. 2 which he said had complained against the accused. What folled was that court 2 referred the matter to Court No. 5 to Hon. Ndengeri for disposal.

It is stated that the charges were amended but it is not clear at what point the amendments were done. There is no signature or date on any of the charge sheets to show that the magistrate allowed the amendments.

The trial magistrate read the charges to the accused who pleaded guilty. He was sentenced to serve:-

- Count I - Three (3) months imprisonment
- Count II - One (1) month imprisonment
- Count III - One (1) month imprisonment
- Count IV - One (1) month imprisonment
- Count V - One (1) month imprisonment

I have perused the file and note that the trial magistrate did not ask the prosecution to state the facts of the case. This would have assisted her to know whether the facts constituted the offences charged and helped in imposing the sentences for it would have brought out the circumstances under which the offences were committed. The magistrate proceeded unprocedurally to enter a plea of guilty in respect of Counts I, II, III, IV and V.

The nature of the offences are such that they were allegedly committed in the course of judicial proceedings before Hon. Oigara. The magistrate ought to have dealt with the matter in the same file in which the lawful orders were allegedly disobeyed and in respect of which the accused failed to attend court under Sections 121 and 131 of the Penal Code. The accused would have been accorded an opportunity to explain himself before any action was taken against him.

It was a misdirection on part of the court to refer the matter to the police before hearing the accused. If the accused pleaded not guilty to the charge, this would have dragged the magistrate to step in the shoes of a witness before the trial court. I have not seen the proceedings in the case before Hon. Oigara Criminal Case No. 453 of 2014 in order to know the nature of the orders he made while referring the accused to be charged.

It is my finding that the trial magistrate's orders convicting the accused in counts I, II, III, IV and V were irregular and it follows that the sentences were based on an irregularity.

The charges are defective and mixed up in that it is not clear whether the accused was charged with two or with 5 counts. The magistrate did not sign the charges when taking plea which is a requirement.

Due to the foregoing irregularities, I hereby invoke the powers conferred on this court under Sections 362 and 364 of the Criminal Procedure Code and make the following orders:-

1. That the convictions in counts I, II, III, IV and V are hereby quashed and sentences set aside.
2. The accused person is hereby set at liberty unless otherwise lawfully held.

F. MUCHEMI

JUDGE

31/03/2016