



**IN THE HIGH COURT AT HOMA BAY**

**CRIMINAL REVISION NO. 66 OF 2015**

**IN THE MATTER OF**

**HOMA BAY CHIEF MAGISTRATES COURT**

**CRIMINAL CASE NO. 1245 OF 2013**

**AND IN THE MATTER OF**

**ERICK OCHIENG ABUKA**

**RULING ON REVISION**

1. This matter was brought to my attention by the Chief Magistrate, Homa Bay under **section 363** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)* to examine the record of proceedings before the subordinate court and satisfy myself of the legality and propriety of the findings and orders made therein.

2. **ERICK OCHIENG ABUKA** was charged with the offence of house breaking and stealing contrary to **section 204(b)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He pleaded guilty, was convicted and sentenced to 2 years' probation.

3. When the matter was brought before the Chief Magistrate on 25<sup>th</sup> August 2015, she noted that the accused had been arrested for violating the terms of the probation and warrants of arrest issued, executed and the accused committed to prison yet the record did not show that the court had issued orders for his committal.

4. I have reviewed the proceedings and the record does not show that the accused was summoned to attend court to answer allegations that he had violated the probation terms nor given an opportunity to challenge the allegations against him. There is also no order of committal to prison in the file hence such an order must have been made in error.

5. **I therefore order that the ERICK OCHIENG ABUKA be released forthwith from Homa Bay GK Prison to complete the probation period as per the sentence imposed on 8<sup>th</sup> November 2013.**

6. **The probation officer is at liberty to move the court in the event the accused has violated the terms of probation.**

**DATED and DELIVERED at HOMA BAY this 26<sup>th</sup> day of August 2015.**

**D. S. MAJANJA**

**JUDGE**