



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**MISC CR APPLICATION NO 9 OF 2014**

**RONALD KIPTOO MENJO .....APPLICANT**

**VS**

**REPUBLIC .....RESPONDENT**

***(Being an application to have revised the decision of Honorable B. Limo Resident Magistrate, Kapsabet delivered on 6 January 2014 in Kapsabet Criminal Case No.1190 of 2013)***

**RULING ON REVISION**

The applicant has asked this court to exercise its powers of revision as donated by Section 362 of the Criminal Procedure Code (CPC), CAP 75, Laws of Kenya, and quash the decision of the Honorable Magistrate sitting in Kapsabet, whereby the applicant was committed to jail for a duration of 30 days apparently for committing contempt in the face of the court. The grounds upon which the application is based, are that , the applicant was summarily imprisoned without being granted a chance to plead or be heard and that the sentence of 30 days was excessive and "too primitive" in the circumstances. The applicant has deponed that on 6 January 2013 (probably meant 2014), he accompanied his sister one Betty Cherotich to court in Kapsabet. Betty was facing a criminal charge before the court. On that day, it seems as if an issue arose as to whether Betty had absconded bond and the honorable magistrate temporarily cancelled her bond. It appears from the record that the applicant rose up and started shouting at the trial magistrate. The trial magistrate, being faced with this behavior stated as follows :-

*" In view of the conduct of Ronald Kiptoo Menjo in disrespecting the court, the accused is summarily sentenced to 30 days in jail".*

It is that order which the applicant now seeks to be subjected to revision.

Mr. K. Mutai for the applicant argued that the sentence was harsh and not in line with the law. He however was unable to tell which law was broken by the trial magistrate. He further averred that there was no opportunity given to be heard and that the magistrate acted in anger.

Mr. Munene for the State, conceded to the application. In his view, there was an apparent error on the face of the record as the record does not reflect that the trial magistrate asked the applicant to stop shouting.

Both Mr. Mutai and Mr. Munene labored to demonstrate what law was flouted by the trial magistrate. I have looked up at the law and I think the issue is covered by the provisions of Section 121 of the Penal Code which provides as follows:-

**121. (1) Any person who -**

*(a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or*

*(b) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or*

*(c) causes an obstruction or disturbance in the course of a judicial proceeding; or*

*(d) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or (e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or*

*(f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or*

*(g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or*

*(h) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or*

*(i) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceeding is being had or taken,*

*is guilty of an offence and is liable to imprisonment for three years.*

*(2) When any offence under any of paragraphs (a), (b), (c), (d) and (i) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding one thousand four hundred shillings or in default of payment to imprisonment for a term not exceeding one month.*

*(3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the High Court to punish for contempt of court.*

It will be seen from the above provisions that a party in contempt of court is liable to imprisonment for upto 3 years. If the offence is committed in view of the court, or in the face of the court, the court can take cognizance of the offence and so long as the court has not risen for the close of the day, the court can summarily sentence the offender. If the court, utilizes its powers under S.121(2), it is not necessary for a charge sheet to be drawn and depending on the nature of the offence, and the surrounding circumstances, the court is not bound to hear the offender. For example, how is the court to hear the offender if the offender is shouting at the court ? The court has mandate to protect the institution of the judiciary and enforce the respect that all must have for the courts. That is why it has been given the powers under Section 121 (2) above. Of course, the court is expected to act rationally and reasonably depending on the surrounding circumstances.

I am not in doubt that the applicant committed contempt in the face of the court and the court was within its powers to act pursuant to the provisions of Section 121 (2) of the Penal Code. I cannot accept the argument that the court acted in anger. The court was bound to preserve its dignity and was right in punishing the applicant for contempt in view of the court. It would have been irrational for the magistrate

not to act, when the applicant was shouting at him. There was no error in the trial magistrate holding that the applicant has committed contempt in the face of the court and no error with the trial magistrate proceeding to punish the applicant.

The only point in which I can fault the trial magistrate is on the sentence. Section 121(2) of the Penal Code provides that the sentence shall be a fine not exceeding Kshs. 1,400/= or in default of payment, a term of imprisonment not exceeding one month. The trial magistrate sentenced the applicant to a term of imprisonment of 30 days (which is one month) but the sentence is supposed to be in default of payment of the fine. The proper sentence should have been to a fine, and in default, to a term of imprisonment not exceeding 30 days. That is the only error that the trial magistrate made.

I must correct that error pursuant to the powers of revision given to this court. I therefore substitute the sentence of 30 days with a fine of Kshs. 1,400/= which fine must be paid on or before the 24th day of January 2014, and in default of the payment, the applicant to serve 30 days in jail for contempt of court. The fine will be paid in the original criminal case.

This matter will be mentioned on 27th January 2014 to confirm whether or not the fine has been paid and for any further orders of the court.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF JANUARY 2014**

**JUSTICE MUNYAO SILA**

**DUTY JUDGE**

**HIGH COURT AT ELDORET**

*Delivered in the presence of:*

*Mr. K. Mutai present for the applicant.*

*N/A for the state.*