

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 4 OF 2014

REPUBLIC.....APPLICANT

AND

JACOB MUTUTU.....RESPONDENT

RULING ON REVISION

Through a letter dated 26th February 2014, the Acting Senior Principal Magistrate asked this court to revise the orders in Criminal Case No. 103 of 2014 from the Mwingi Senior Resident Magistrate's Court. In the lower court file Jacob Mututu (Jacob) had been charged with two counts of creating disturbance contrary to section 95 (1) (b) of the Penal Code by insulting Muthengi Mengi and Hellen Mwende Muthengi on 19th February 2014 and 20th February 2014 respectively at 9.30pm within Mwingi town. He faced third count of being drunk and disorderly contrary to section 33 (1) as read with section 33 (2) of the Alcoholic Drinks Control Act.

Jacob pleaded guilty to all the counts, was convicted and sentenced to pay a fine of Kshs 8,000 in counts 1 and 2 and Kshs 500 in count three in default to serve six months in jail. The jail term is not specified to include all the counts.

Before I make the orders on revision, I wish to point out that the record of the lower court contains some errors. I have stated in other cases on revision, the trial magistrate has not entered a plea of guilty after the accuser person pleaded guilty. He went ahead to take the facts after which the accused admitted. It is at this stage that the trial magistrate entered a plea of guilty. This is wrong. After the plea is taken and the offence admitted, the trial magistrate ought to have entered a plea of guilty. After the facts were given and admitted, the trial magistrate ought to have entered a conviction on the accused's own plea of guilty then call for the previous records. After this the trial court ought to have asked the accused person to mitigate and then pass the sentence.

The record shows that no conviction was entered in this case. After reading of the facts and "plea of guilty entered", the court took mitigation and sentenced without convicting. The sentences are an illegality and must be set aside. I hereby set the sentences of payment of Kshs 8,000 in counts 1 and 2 and Kshs 500 in count 3 aside. I correct the record and enter a conviction against the Jacob Mututu in counts 1, 2 and 3 respectively. However, I do give Jacob Mututu a conditional discharge that he does not commit another offence within six months failure to which he shall be sentenced on these charges. I make order accordingly.

Dated, signed and delivered on 19th March 2014.

S.N.MUTUKU

JUDGE