



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL REVISION NO. 3 OF 2014

REPUBLIC.....APPLICANT

AND

PATRICK KILYUNGI MUTEML.....RESPONDENT

RULING ON REVISION

Mwingi Senior Resident Magistrate's Criminal Case No. 508 of 2013 was brought to the attention of this court by the Ag. Senior Principal Magistrate. It is for revision to correct the sentence which is said to be against Section 28 of the Penal Code. The accused in the lower court, Patrick Kilyungi Mutemi (Patrick) faced two counts of creating disturbance in a manner likely to cause a breach of peace contrary to Section 95 (1) (b) of the Penal Code. It was alleged that on 17<sup>th</sup> September 2013 at Kiomo village Kiomo location of Mwingi Central District of Kitui County he chased Mbete Mwinzi while armed with a knife. It alleged in count two that on 18<sup>th</sup> September 2013 at Kiomo village in Kiomo Location in Mwingi Central District of Kitui County he chased and threatened Regina Muusi while armed with a knife.

The case went to full trial after which Patrick was convicted and sentenced to pay a fine of Kshs 8000 in default to serve 6 months.

An offence under **Section 95 (1) (b)** of the Penal Code attracts imprisonment for six months. Under **Section 28 (2)** of the Penal Code a fine exceeding Kshs 2,500 but not exceeding Kshs 15,000 attracts imprisonment for 3 months in default of payment of such fine. The trial magistrate was in error in giving 6 months in default of payment of Kshs 8,000.

My reading of the record of the lower court reveals more errors. The language used by the witnesses is not indicated; there is no indication as to whether Section 211 of the Criminal Procedure Code was complied with and the trial magistrate omitted to sentence Patrick for one count. The trial magistrate also omitted to call for the previous records of the offender. The order reads: **“Accused convicted on own plea of guilty ordered to pay Kshs 8000 in default serve 6 months. Sentences to run concurrently”(sic)**. The trial magistrate omitted to capture conviction of both counts during the sentencing although he stated that the sentences were to run concurrently. I have looked at the committal warrant and I have noted that it captures both counts. This is an error that requires to be corrected.

The power of this court on revision includes power to alter or reverse an order made by the lower court. It is for this reason that I hereby correct the error of the lower court as follows:

The sentence of payment of Kshs 8,000 fine in default to serve 6 months imprisonment is hereby set aside. In its place, this court sentences Patrick Kilyungi Mutemi to pay a fine of Kshs 5,000 in default to serve 3 months imprisonment in each count. If the fine is not paid and the sentences in default must be served, then they shall be served concurrently. I make orders accordingly.

**Dated, signed and delivered on 19<sup>th</sup> March 2014.**

**S.N.MUTUKU**

**JUDGE**