

NO. 425/14

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION 336 OF 2014

JONATHAN KASAIN MBUTU.....1ST APPLICANT

JOHNSTONE JONISA KENYATTA2ND APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. This file has been placed before me the pursuant to a letter written by **MM O'mirera**, Senior Assistant Director of Public Prosecutions. The basis being that Hon. **Okuche, Principal Magistrate, Kajiado** convicted accused persons following their own plea of guilty. He sentenced each one of them to perform Community Service for a duration of 30 days. One of the accused persons was however, found unsuitable to serve since he had no fixed place of abode.
2. The learned Senior Assistant Director of Public Prosecutions sought revision under **Section 362** of the **Criminal Procedure Code**.
3. My duty is therefore to satisfy myself of the correctness; legality and propriety of the sentence/order made by the subordinate court.
4. The offender was charged with stealing decoration flowerS valued at Kshs. 2000/= . He pleaded guilty right at the outset and was sentenced accordingly.
5. Having been interviewed by the Community Service Officer/Probation Officer, It was found that he had no fixed abode therefore it would be difficult to supervise him. He was taken back to court on the **11th October, 2014**. The court sentenced him to pay a fine of **Kshs. 2000/=** or serve **fourteen days** imprisonment in default.
6. Ordinarily, a court of law would require a Community Service Officer to file a report following an inquiry carried out prior to making a community service order. The offender expected to perform community service must inform the court if he is willing to perform the community service as an alternative to imprisonment (*See Section 4 of the Community Service Orders Act*).
7. It is mandatory for a court making the order to be specific as to the actual placement and conditions upon which the offender is to serve. (*See Section 6 of the Community Service Orders Act*).
8. A court can vary the order made following an application. In this case it is obvious that the learned trial magistrate misdirected himself in making the order, however, after the Community Service Officer filed a report in respect of the offender he acted in the interest of justice and varied the order made. This was pursuant to **Section 12(1)** of the **Community Service Order Act**.
9. In the premises, there is nothing to revise.

DATED and SIGNED at MACHAKOS this 30TH day of OCTOBER, 2014.

L.N. MUTENDE

JUDGE