



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL REVISION NO. 61 OF 2013**

(From original Conviction and Sentence in Criminal case No. M. 735 of 2013 in the

Resident Magistrate's Court at Mombasa – **Hon. A.K. Gachie -RM**)

**KAHINDI YAA .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

This revision application was commenced by way of a letter dated 12th April, 2013 by Mwakisha Advocate and addressed to the Deputy Registrar.

The grounds are that no facts were read over to the Accused as the record of proceedings shows that what was recorded after his plea was "*facts as per charge sheet*". It is contended that the plea was not unequivocal.

I have perused the record of proceedings and its noted that the Applicant was charged with the offence of erecting a building without first giving in Writing or a Notice of Inspection card contrary to by law 16 (1) as read with by law 257 of the building orders 1968.

As pointed out by Counsel for the applicant the penalty provided for under section 257(2) is a fine not exceeding Two Thousand Shillings (2,000/=) or Imprisonment for a term not exceeding six(6) months or both, but in the present case the applicant was fined Ksh. 100,000/= in default one (1) year imprisonment and it was further ordered that the cash bail to be utilized as fine.

Article 50(b) of the Constitution provides that an Accused person has the right to be informed of the charge with sufficient detail to answer it.

In the present case no facts were read to the Accused and therefore he was not afforded sufficient details to which he could answer it.

The learned trial magistrate proceeded to Sentence the applicant to pay a fine of Ksh. 100,000/= in default one(1) year imprisonment which fine and imprisonment term was not provided for under the Building code and Building orders 1968.

By reason of the foregoing I accordingly reverse the Conviction and Sentence meted out on the applicant and order that the matter be retried by a Court of competent jurisdiction. Matter to be mentioned before the In charge City Court.

Ruling delivered dated and signed this **18th** day of **November, 2014**.

.....

**M. MUYA**

**JUDGE**

**18TH NOVEMBER, 2014**

***In the presence of:-***

Court clerk Benson

Absence of the applicants

***FURTHER ORDERS:***

Mention on **28th November, 2014** before Chief Magistrate for further directions. Notice to issue to the Counsel for the applicant, the Director of Public Prosecution.

.....

**M. MUYA**

**JUDGE**

**18TH NOVEMBER, 2014**