



REPUBLIC OF KENYA

High Court at Mombasa

Revision Case 58 of 2013

1. ABDALLA LALI MOHAMED

2. ABDALLA MUDHIRI

3. ABDALLA MOHAMED KARAMA

4. HAFIDH ABDUL MOHAMED APPLICANTS

- Versus -

REPUBLIC RESPONDENT

RULING

HASSAN

This Court was moved by way of a letter dated 21st February 2013 for purposes of reviewing a sentence of six months imprisonment without an option of fine.

The Applicants were charged with the offence of committing nuisance in a public place contrary to by laws 19(e) of the Mombasa Municipality (General Nuisance) 2010.

The particulars were that on the 5th day of February 2013 at about 5.30pm at Kibokoni within Mombasa Municipality – Mombasa County, they were found committing nuisance, in that they were found seated idly without reasonable cause.

There were no facts given by the prosecution to enable the trial Court to appreciate the nature of the offence the Applicants were charged with; principally to ascertain whether the facts disclosed an offence.

The question which comes to mind is whether sitting idly is an offence or whether it's an attempt to criminalize resting.

Article 39 of the Constitution provides for freedom of movement and residence. No body can legally legislate laws that go contrary to the provisions of the Constitution as such laws are deemed null and void.

A perusal of the lower court proceedings shows that before sentencing the learned trial Magistrate was exhorted to take a stern action by the prosecution, reason being that the Applicants were found in a place which is a den of thugs and robbers.

Before sentencing by the Magistrate the Applicants were not invited to mitigate. At that stage of

mitigation they would have explained why they were found at the place there were (found) at the time of arrest.

Section 362 of the Criminal Procedure Code provides-

“The High Court may call for an examine the record of any criminal proceedings before any Subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding sentence or order recorded or passed and as to the regularity of any proceedings of any such Subordinate Court.”

After examining the proceedings of the lower Court, I am satisfied that the plea was not unequivocal and the charge itself was defective in the first place (*ab initio*). The conviction is reviewed and quashed accordingly, the sentence is set aside.

The Applicants are set at liberty unless otherwise lawfully held.

Ruling read and delivered in open Court this 25th day of April, 2013.

**M. MUYA
JUDGE**

In the presence of:-

State Counsel - Mr. Dzumo

Mr. Egunza – Counsel for the Applicants

Court clerk – Mr. Musundi