



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL REVISION CASE NO. 7 OF 2013**  
**(Arising from Kericho CM Criminal Case No. 1277 of 2013)**  
**Republic -vs- Charles Kiplangat & 5 others**

CHARLES KIPLANGAT ..... 1ST APPLICANT  
NICHOLAS MOSETI.....2ND APPLICANT  
BERNARD BURE .....3RD APPLICANT  
VINCENT KIRUI.....4TH APPLICANT  
BERNARD CHEPKWONY.....5TH APPLICANT  
JUDITH NYARUDI.....6TH APPLICANT  
  
VERSUS  
  
REPUBLIC ..... RESPONDENT

**RULING ON REVISION**

Charles Kiplangat, Nicholas Mosei, Bernard Bure, Vincent Kirui, Bernard Chepkwony and Judith Nyarudi hereinafter referred to as the “1st – 6th Applicants” respectively were convicted on their own plea of guilty for the offence of gambling in a public place without a licence contrary to **Section 55(1)** of the **Betting Lotteries and Gaming Act**. The particulars of the offence are that on **15th day of July, 2013 at 14.30 hours at Kapsuser centre in Kericho West District in Kericho County, the accused persons were found playing cards in a public place namely Kapsuser centre without a licence for monetary gains**. Upon conviction they were each ordered to pay a fine of Kshs. 3,000/= in default to serve one(1) months imprisonment.

Pursuant to the provisions of **Section 363(2)** of the **Criminal Procedure Code**, the Deputy Registrar of this court, placed the proceedings relating to this case for perusal. The court is mandated under **Section 362** of the **Criminal Procedure Code** to peruse proceedings from the courts subordinate to it in order to satisfy itself as to the correctness, legality or propriety of the decision. I have carefully perused the proceedings. The record shows that the substance of the charge was read to the accused persons who readily pleaded guilty. It would appear, Honourable Ndururi, the learned Principal Magistrate entered a

plea of guilty and straight away proceeded to convict the accused persons. He thereafter sentenced each of them to pay a fine of Kshs. 3,000/= in default to serve one(1) month imprisonment. It is apparent from the record that the learned Principal Magistrate made several errors in the process of taking the plea. Before returning a plea of guilty, there are several steps which must be followed namely:

**First**, the substance of the charge must be read and explained to the accused in a language he understands under **Section 207(1)** of the **Criminal Procedure Code**.

**Secondly**, the exact words in response by the accused person to the charge must be recorded. It is not enough to simply replicate the standard words **“It is true”**. This assertion is only in respect of proceedings where the accused pleads guilty.

**Thirdly**, where the accused pleads guilty to the substance of the charge, the court shall convict under **Section 207(2)** of the **Criminal Procedure Code**.

**Fourthly**, before passing the sentence, the court should call upon the prosecution (*complainant*) to outline the facts upon which the charge is founded- Pursuant to the Proviso to **Section 207(2)** of the **Criminal Procedure Code**.

**Fifthly**, upon outlining the facts on which the charge is founded, the court should call upon the accused person to either admit or deny the facts.

**Six**, when the accused admits the facts, the next step is to call upon the prosecution to give the accused's past criminal record. It is at this juncture that the court gets to know whether the convict is a first offender or not. This fact is important when determining the appropriate sentence.

**Seven**, the court finally permits the accused person to submit facts in mitigation under **Section 216** of the **Criminal Procedure Code**. It is after then that the court can pronounce the order on sentence.

In exercising this court's supervisory power of revision, I am enjoined to establish whether or not the above steps were followed and complied with. It is quite clear from the record that the learned Principal Magistrate only complied with the first step and missed out on the second to the seventh steps. It cannot be said that the plea of guilty was unequivocal. The record does not reveal whether the accused persons were first offenders or not. The maximum sentence for the offence under **Section 55(1)** of the **Betting, Lotteries and Gaming Act** is a fine not exceeding Kshs. 3,000/= or a term of imprisonment for three months or both. In the case before this court the learned Principal Magistrate pronounced a sentence of Kshs. 3,000/= in default to serve one(1) month imprisonment. It is apparent, that he gave the maximum fine provided for by law. If the accused persons turned out to be first offenders, then the order on sentence would be inappropriate as the same will be regarded as harsh and excessive. In my view, the sentence meted out in such circumstances would go against sentencing policy. The Court of Appeal in **Paulina Amana -vs- R, Eldoret C.A.CR. Appeal No. 604 of 2010 [2013] eKLR** held *inter alia* that:

“ 1. ...

2. ...

3. ***A record of an unequivocal plea should show the question posed to the accused by the court explaining the consequences and a reply by the accused recorded as an answer.***

4. ***The plea of guilty that was recorded in respect of the appellant was not unequivocal as the appellant's own words were not recorded.***

5. ....”

I will apply the above line of reasoning to these proceedings. The weaknesses I have pointed out, entitles me to interfere with the decision in exercise of this court's supervisory power of revision. In sum, I find the plea was equivocal hence the conviction cannot stand. No facts were outlined to the court to establish the offence the applicants were convicted for.

I would have made an order directing that a retrial be undertaken but I will not issue such an order because it will be prejudicial to the accused persons. If such an order is made, it will give the prosecution an opportunity to seal the gapping loopholes and most probably secure a conviction. This is a case where the prosecution committed grave errors and blunders. They cannot be given a second chance to have a bite of the cherry.

In the end, I make an order quashing the conviction and setting aside the sentence. The accused persons (*Applicants*) are hereby set free forthwith unless lawfully held. I further direct that if any fines have been paid, they should be refunded forthwith.

***Dated, signed and delivered at Kericho this 24th day of July, 2013***

**J.K. SERGON**

**JUDGE.**