

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION NO. 11 OF 2013

(Arising from Sotik SRM Criminal Case No.239 of 2013)

V.C.M.APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING ON REVISION

The proceedings relating to **Sotik S.R.M.C. Cr. C. No. 239 of 2013 R=vs= V.C.M** were placed before this court to peruse and take the necessary action in exercise of its supervisory power of revision under **Section 362** of the **Criminal Procedure Code**. In exercising of the aforesaid jurisdiction this court is required to satisfy itself as to the correctness, legality, propriety or regularity of any finding, sentence or order recorded or passed by any subordinate court.

Honourable J.A. Kasam, learned acting Senior Resident Magistrate, caused the aforementioned proceedings to be placed before this court. The learned magistrate was prompted to place that file before this court by the psychiatric report on the applicant prepared by Dr. J.W Njau, a psychiatrist based at the Rift Valley Provincial General Hospital in which V.C.M. was found to be of unsound mind hence unfit to stand for trial. The recorded proceedings presented to this court show that V.C.M, hereinafter referred to as the Applicant was arraigned before Sotik S.R.M's court, to face a charge of two counts. In the first count, she was accused of stealing from the person contrary to **Section 279(a)** of the **Penal Code**. In the second count, the Applicant faced a charge of escape from lawful custody contrary to **Section 123** as read with **Section 36** of the **Penal Code**. When the Applicant appeared for plea, she pleaded guilty to the first count and was convicted and sentenced to one(1) year imprisonment. She however denied the offence in the second count. The case was fixed for hearing in respect of the offence stated in count II on 6th August, 2013. It is on this date that the court Prosecutor informed the trial magistrate that the accused person had been found unfit to stand for trial by the Provincial Psychiatrist. Upon receipt of the aforesaid information, the learned Senior Resident Magistrate promptly allowed the application by the Prosecution to terminate the case in count II. It is clear from the referral proceedings that the learned Senior Resident Magistrate is urging this court to determine whether the plea of guilty recorded against the Applicant in count I was equivocal or not. I have carefully considered the matter and I am convinced that it is possible the accused person (*Applicant*) may have been allowed to plead when she was actually of unsound mind. This brings to question the validity of many convictions based on pleas of guilty by accused persons. Perhaps it is the right time for the High Court to direct the trial courts to ensure that before a plea of guilty can be recorded a Psychiatrist report be first presented to the court. I know, this will cause great inconvenience to the parties and may clog our criminal justice system as the courts will be hampered from recording pleas of guilty expeditiously. I think the legislature may have foreseen this impediment while enacting **Section 162** of the **Criminal Procedure Code**. I do not intend to give a directive that will impede the course of justice from freely flowing but I leave it to the good sense of judgment of the trial magistrates. Coming back to the matter before court, I am satisfied that there is need to interfere with the decision of the trial court. I think the plea of guilty cannot be said to be unequivocal in the circumstances. I hereby order that the conviction be quashed and the sentence of one (1) year imprisonment be set aside. The accused (*Applicant*) be taken before the Senior Resident Magistrate's court, Sotik, to take a fresh plea before another magistrate of competent jurisdiction other than Honourable J.A. Kasam. The aforesaid court should take into account the provisions of **Sections 162,163,164,166 and 167** of the **Criminal**

Procedure Code for guidance in handling the case. The case be placed before the aforesaid court on 14th August, 2013 for mention for further orders and directions. The Prison authorities are directed to have V.C.M to be escorted to the Sotik Senior Resident Magistrate's court on 14th August, 2013 for fresh plea taking.

Dated, signed and delivered this 8th day of August, 2013.

J.K. SERGON

JUDGE