



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
REVISION CASE 390 OF 2012

REPUBLIC.....APPLICANT

VERSUS

JOHNSON KINYUA GICHIGI.....RESPONDENT

REVISION ORDER

This file has been placed before me for purposes of revision pursuant to **Section 364** of the **Criminal Procedure Code**. The background of this matter is that the accused, Johnson Kinyua Gichigi was charged with the offence of forgery contrary to **Section 349** of the **Penal Code** in PMCR 265/2012, Nyahururu. The accused pleaded guilty to the charge and was sentenced to serve 2½ years imprisonment by V. K. Kiptoon, Resident Magistrate Nyahururu. On 2/3/2012, the court prosecutor informed A.B. Mongare, Senior Resident Magistrate, that though the accused had been sentenced to 2½ years imprisonment, there was information that he was not serving the custodial sentence. The prosecutor applied for a warrant of arrest which the court granted. On 14/6/2012, the accused was taken before the Senior Resident Magistrate under warrant of arrest. The court observed that the accused should have been in prison but there was a warrant of committal for a sentence of Kshs.10,000/- in default one year imprisonment dated 8/2/2012. It is then the court referred the matter to this court for revision.

On the file is exhibited a receipt for Kshs.10,000/- which the accused allegedly paid as fine against the warrant of committal which was allegedly signed by A.B. Mongare, Senior Resident Magistrate on 8/2/2012. It is said to have been signed in error. The sentence handed by the trial court on 8/2/2012 is 2½ years and it has not been set aside or quashed. The sentence of a fine of Kshs.10,000/- in default one year imprisonment has no basis. The court never imposed such sentence. The court has been informed that the original file has been sent to the Judicial Service Commission.

In my view, the sentence of Kshs.10,000/- in default one year imprisonment is not founded on the proceedings before the court and it was either a mistake or a forgery. For that reason, I hereby quash and set aside the warrant of committal dated 8th February 2012, and the fine of Kshs.10,000/- be refunded to the accused.

The accused person is committed to prison to serve the prison sentence of 2½ years imposed on 8/2/2012. It is so ordered.

DATED and DELIVERED this 20th day of June 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Nyakundi for the State

Mr. Nderitu for the respondent

Kennedy – Court Clerk