

REPUBLIC OF KENYA

High Court at Machakos

Revision Case 470 of 2012

MUTUA MBUVI.....ACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

ORDER ON REVISION

Mutua Mbuvi was on 2nd July, 2012 arraigned before the Chief Magistrate’s Court, Machakos charged with stealing by servant contrary to section 281 of the Penal Code. It was claimed that on 14th July, 2012 at Wetaa Sub-location, in Mwala District within Eastern Province being a servant of **Peter Wambua Nzuki**, he stole Kshs. 12,000/= and mobile phone, Nokia 1110 worth Kshs. 7500/= the property of the said **Peter Wambua Nzuki** which came to his possession by virtue of his employment.

He pleaded not guilty to the charge and the case was scheduled for hearing on 9th July, 2013. Come that day and the case could not proceed. Instead it was re-scheduled for 2nd August, 2012 with a mention date on 24th July, 2012. On the mention date aforesaid, the accused opted to change his plea from not guilty to guilty. On 15th August, 2012, the accused was convicted on his own plea of guilty and sentenced to 3 months probation.

By a letter dated 4th September, 2013 addressed to this court by the District Probation Officer, Machakos, it was pointed out that the minimum period for a probation order is six months pursuant to section 5(1) of the Probation Offenders Act. Accordingly, the learned magistrate in placing the accused on probation for a period of 3 months, the order was irregular. The probation officer therefore requested this court to invoke its jurisdiction revision to correct the anomaly.

Under section 362 of the Criminal Procedure Code, this court is empowered to call for and examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to the correctness, legality of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Pursuant to the aforesaid provision I have called and examined the records of the trial Court in respect of the above case and I am satisfied that the order or sentence of probation for 3 months imposed on the accused was irregular. Sections 5(1) of the Probation Offenders Act specifically provides that-

“Probation order shall have effect for such period of not less than six months and of not more than three years...”

By sentencing the accused to 3 months’ probation, the learned magistrate breached this specific requirement of law.

Powers of this court on revision are enshrined in section 364(1) of the Criminal Procedure Code. Amongst those powers, this court may alter the sentence by reducing, increasing it or altering the nature of the sentence. However in exercising such powers, no order should be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence. So since I am likely to enhance the sentence, no doubt this will be prejudicial to the accused.

Accordingly, I will set aside the order by the learned magistrate committing the accused to the

probation for a period of 3 months. However, before I correct the irregularity and impose the proper sentence, I will invite the accused and or his counsel to address me on the issue on **2nd November 2012**.

DATED, SIGNED and DELIVERED at MACHAKOS this 26TH day of OCTOBER, 2012.

ASIKE - MAKHANDIA
JUDGE