



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL REVISION NO. 8'A' OF 2011

VERONICA NGUGI NGIGE.....1ST
APPLICANT

SUSAN WAMBUI KAMAU.....2ND
APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

Veronica Ngugi Ngige and Susan Wambui Kamau (*the Applicants*) were charged with the offence "**Exposing Beer for Sale without a licence contrary to Section 34(1) & (2) of the Alcoholic Drinks Control Act, 2010 (No. 4 of 2010).**"

The particulars were that-

"the Applicants on the 20th day of February 2011 at about 1830 hours at Al Sadam Trading Centre in Nyandarua County were jointly found exposing beer for sale without a licence in contravention of the said Act."

The Applicants both pleaded guilty to the charge, and a plea of guilty was entered by the learned Senior Resident Magistrate. The prosecution merely stated that "**the facts were per the charge sheet,**" and the Applicants each stated "**True**". The Applicants did not offer any information in mitigation.

This court's power under Section 362 of the Criminal Procedure Code is to call for and 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 subordinate court.

The procedure in all criminal charges is for the court after reading and explaining the charge to an accused, to require or ask the accused how he/she pleads. If the accused pleads guilty, a plea of guilty shall be entered by the trial magistrate. Similarly a plea of "**not guilty**" shall be entered where the accused pleads not guilty.

Where the accused pleads not guilty, the magistrate taking the plea will indicate the number of witnesses, will give a date for the hearing or mention of the case (*as appropriate*) and the case will take

its normal cause of taking evidence for the prosecution, and where the trial court finds an accused has a case to answer will put the accused to his defence, and explain to the accused his statutory rights under 211 of the Criminal Procedure Code to give evidence on oath and be liable to cross-examination, to call witnesses, or give an unsworn statement and escape cross-examination, or merely to keep silent.

However, where an accused pleads guilty, the trial magistrate must enter a plea of guilty, and thereafter call the prosecution to state the facts in support of the charge. The particulars of the charge as required under **section 137(a) (iii)** is merely a brief statement of the day or date, place, and time the accused are said to have committed the offence. The facts no doubt include those brief and cardinal particulars, but are many more than these. The facts, like in this case, would include the requirement that the accused were required to have a licence by a certain date, and offered no explanation why they did not have the licence. It may include information that the accused are owners, or merely employees in the particular facility. All this would go to show whether or not their plea of guilty in the first instance was clear and unequivocal.

That is why in the *locus classicus* case of **ADAN vs. REPUBLIC [1973] E.A. 445**, on taking of a plea of guilty, the trial court is required, after the facts are read to an accused who has pleaded guilty, to ask the accused whether the facts are true, or whether the accused has an explanation to them. If the accused confirms in clear terms or language, that the facts are true, then the trial magistrate must again, enter a plea of guilty. If the accused disputes any of the facts read, then the trial court must enter a plea of not guilty, and let the matter proceed to trial in the normal way.

In this case, there is no record of either the facts, (*particulars of a charge are a tiny aspect of the facts*), being read and explained to the Applicants. There is no request or intimation by the trial court (*as precedent demands*), to the applicants whether the facts as read to the court by the prosecution are true or not. There is consequently no record that the applicants confirmed their plea of guilty. The applicants consequently offered no mitigation.

This leads this court to give credence to the Applicants' contention that the charge was hurriedly read to them, and that they did not therefore comprehend the charge facing them, and that had the facts been read to them, they may well have given a different response.

I think there were serious procedural lapses on the part of the learned trial magistrate, and in particular failure to adduce the full facts from the prosecution, and consequently failing to give the applicants an opportunity to unequivocally plead to the charge, and failure to record such plea after facts are outlined.

For those reasons, it is unsafe to maintain the conviction and sentence of the applicants. In exercise therefore of the discretion vested in this court under **Section 364(i)(a)** as read with **Section 354(3)(a)(i) of the Criminal Procedure Code**, I quash the conviction, and set aside the sentence imposed upon the applicants. I direct that they be released forthwith unless otherwise lawfully held.

Those are the orders of the court.

Dated at Nakuru this 18th day of March 2011

M. J. ANYARA EMUKULE
JUDGE