



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Revision 17 of 2010**

**1. EPHANTUS GACHANJA
2. KAKUNZA NYAMAWI
3. NELSON BEBEWA
4. JOHN MBUNGIAPPLICANTS**

VERSUS

REPUBLICRESPONDENT

ORDER

The Applicants pleaded guilty to the offence of Unauthorized Transaction of Foreign Exchange Business contrary to Section 33 A (1) as read with Section 33 A (2) of the Central Bank of Kenya and were fined Kshs.100,000/- each or one (1) year imprisonment.

The applicants duly paid the fines and were released. They did not prefer any appeal against the sentence.

They have now made this application under the provisions of Section 364 (1) and Section 365 of the Criminal Procedure Code for the Court to look into the propriety, legality and appropriateness of the proceedings of the case and to exercise its revisionary powers. The legal and/or procedural issues being raised are:-

- 1) The propriety and legality of the sentence and conviction based on an offence that does not disclose the exhibit on its particulars of offence.
- 2) The propriety of the proceedings recorded by the Learned Magistrate which even refer to exhibit 1,2,3 and 4 stating the Cash amount in different currencies yet those sums are not on the particulars of the offence.

I have considered the application. The applicants voluntarily and without any coercion pleaded guilty to the charges as framed and read to them. They agreed and accepted the Facts and particulars given by the prosecution to the court.

They had the right not to plead guilty and challenge the charges and prosecution they did not.

Upon being convicted and sentenced. They had the right of appeal against both conviction and sentence. They did not exercise the said rights.

The Honourable Magistrate considered the Charge Sheet and exercised her discretion and powers.

The court was a competent court with appropriate jurisdiction. It has convicted and sentenced the applicants. The matters raised are appropriate issues for appeal. There is no appeal lodged.

The court's jurisdiction and powers of revision are strict and should be exercised only in appropriate cases. Revision process ought not be used as a guise of or to supplant appeals. The two are separate and distinct procedures.

I see no impropriety or illegality in these proceedings. For a trial court to reach a possible erroneous

or wrong decision in law does not automatically invoke the revisionary powers of this court.

For this court to intervene the facts, law and circumstances must be certain and clear. The impropriety and the illegality must be discernible on the face of the record. It should not lead to an inquiry into the exercise of discretion or the judgment methodology and thought process of the trial court. That is only possible on appeal.

As a result, I do hereby **disallow and reject this application.** Copies be supplied to the Trial court and the office of the Attorney General for information.

Made on this 1st day of April 2010.

M. K. IBRAHIM
J U D G E