

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL 1 OF 2008

TIMOTHY RONGOMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Timothy Rongoma, was charged in the Senior Resident Magistrate's Court at Voi with one count of being drunk and disorderly contrary to section 42 (1) of the Liquor Licencing Act Chapter 121 of the Laws of Kenya. The particulars of the offence were that the appellant, on the 10th day of August 2007, at about 11.00 a.m., within Voi Town area in Taita Taveta District of Coast Province was found to be drunk and disorderly in that he was shouting and staggering due to drunkenness.

The appellant appeared before D. O. Rabala, then a Resident Magistrate, on 18th December 2007 and pleaded guilty to the charge. The record shows that the appellant asked for forgiveness even before he was convicted. Indeed the Learned Resident Magistrate did not enter the appellant's plea. The prosecution did not give the facts of the case and the Learned Resident Magistrate did not even convict the appellant. The record shows that immediately after the appellant had stated that "**it is true I ask for forgiveness**", the Learned Resident Magistrate proceeded to sentence the appellant to four (4) months imprisonment.

The appellant was dissatisfied and has appealed to this court on the main grounds that his plea was not unequivocal and that the sentence was manifestly excessive in the circumstances.

I have reconsidered and re-evaluated the record before the Learned Resident Magistrate and concur with the Learned State Counsel, Mr. Onserio that this appeal should be allowed. As already stated, the Learned Resident Magistrate neither entered the appellant's plea nor convicted him. The prosecution did not also state the facts of the offence. Since the plea would have been one of guilty to the charge, the Learned Resident Magistrate should have observed the settled procedure when such a plea is offered. See the case of **Adan – v – Republic [1973] EA 445**. This appeal must therefore be allowed. The proceedings before the Learned Resident Magistrate are hereby quashed and the sentence set aside. The appellant is set at liberty unless otherwise lawfully held.

DATED AND DELIVERED AT MOMBASA THIS 22ND DAY OF JUNE 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mr. Mwawasi for the Appellant and Mr. Ondari for the Republic.

F. AZANGALALA

JUDGE

22ND JUNE 2009