



1. Criminal Law
2. Revision
3. Further ruling No.2
4. Subject of main suit/case:-
 - (a) Malicious damage to property contrary to **section 339(1)** of the penal code.
 - (b) Plea – guilty on own plea.
 - (c) Sentence - thirty six (36) months imprisonment.
5. **Revision**
Revision that held:-
 - (i) Plea was not unequivocal.
 - (ii) Only issue is of sentence. The prosecution stated the offender had three previous conviction.
 - (iii) Ordered that prosecution conviction be called up and the trial magistrate to consider the sentence in the light of the prosecution conviction.
 - (iv) Trial magistrate issues production order for 19th October 2009.
 - (v) Previous conviction shows the applicant has one previous conviction of stealing and had been fined.
 - (vi) Trial magistrate unable to understand the previous conviction and returns file to High Court.
6. **Held**
 1. As the offender has a previous convictions then the court would not interfere with the sentence.
7. **Case Law** - Nil
8. **Advocate** - none

(From original conviction and sentence of Kericho Senior Principal Magistrate’s Court

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Criminal Case No.634 of 2009 – J. KWENAH [Senior Resident Magistrate]

KENNETH KIPLANGATAPPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

Number 2

Revision Proceedings.

I. Further Ruling

1. Kenneth Kiplangat applied by a letter to this court to have his conviction and sentence quashed due to the irregularity and incorrectness of his proceedings. The letter of 31st March 2009 was received 2nd April 2009.
2. This court on examining the proceedings after calling for the subordinate court file found that the proceedings were correctly taken down by the trial magistrate and was in oath.
3. The only issue was that of sentence. The prosecution stated the offender had 3 previous convictions. This statement was made from the bar and NOT from previous conviction record held by the police. This court ordered the file be remitted to the magistrate who would then call up officially for the previous conviction and reconsider her sentence depending on the outcome. (30.4.09) (Ang'awa J.)
4. On 19th October 2009, the offender appeared before the trial magistrate. She was unable to understand the previous convictions submitted to her and returned the file to this High Court.
5. This court on perusing the previous conviction noted that appellant had one previous conviction committed at the Kericho Law Courts jurisdiction where he was fined Ksh.5000/= (in default) 6 months imprisonment for the offence of stealing contrary to section 275 of the Penal Code.

II. Opinion

6. Alternative sentence would have been available to the offender if he were a 1st offender. The said influence on the trial magistrate, stating that he had three previous convictions was an error that should not have been

taken into consideration by the trial magistrate whilst sentencing.

7. The previous conviction proves that the offender has committed an offence. The offence under **Section 339(1)** carried a maximum of five years. The offender was sentenced to thirty six (36) months imprisonment. He has been sentenced within the law.
8. I hereby reject the said application for revision. The same is dismissed. The applicant is to complete serving his sentence.

DATED this 3rd day of December, 2009 at **KERICHO**

M. A. ANG'AWA

JUDGE