

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Criminal Revision 18 of 2008

ISAAC BENDE MWANDAWIRO.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

Pursuant to Section 363(2) of the Criminal Procedure Code, the Deputy Registrar of this court placed the proceedings of the subordinate court in **Mombasa C.M. Cr. C. No. 1442 of 2008, R –vs- Isaack Mbege Mwandawiro** for examination. In exercise of the supervisory jurisdiction of this court under section 362 of the Criminal Procedure Code, I perused the aforesaid proceedings.

The record shows that Isaack Mbege Mwandawiro pleaded guilty to a charge of stealing contrary to section 275 of the Penal Code. He was then convicted and sentenced to serve 2 years imprisonment. The accused was dissatisfied with the aforesaid decisions consequently he applied for the proceedings to be placed before this court to interfere with it in exercise of its revisionary power. The particulars of the charge are that on the 15th day of May 2008, at Mbaraki, Kenya Power and Lighting Depot, in Mombasa District of the Coast Province stole assorted hardware and electrical goods to wit 1333 KV spindle valued at Kshs.100,000/-, 4 bolts valued at Kshs.50,000/-, 4 torque ended sockets, 33 KV valued at Kshs.40,000/-, 5 pairs of surge diverters brackets valued at Kshs.5,0000/-, 1 surge diverter valued at Kshs.20,000/- and 1 33 KV angle tie strap valued at Kshs.12,000/- all valued at Kshs.200,000/- the property of Kenya Power and Lighting Company.

The law requires that the charge and all the essential ingredients of the offence should be explained to the accused in a language he understands. It is contended that the plea was equivocal in the sense that the proceedings were conducted in a language the accused did not understand. It is also said that the facts outlined by the prosecution did not prove the offence of stealing. The record clearly shows that the proceedings were conducted in English and Kiswahili languages. The record does not indicate which language the accused understood or spoke. The record further shows that the facts outlined by the court prosecutor alleged that the accused stole the items mentioned in the charge sheet. In view of the above proceedings can it be said that the plea was unequivocal? To begin with, there is doubt as to whether the accused person understood or spoke the language of the court. Secondly, it is also obvious that the facts outlined by the court prosecutor did not establish what was stolen apart from stating that the accused is alleged to have stolen the items mentioned in the charge sheet.

Thirdly, it is apparent that the items stolen were not produced in court as exhibits in evidence. This court in **Lusiti –vs- R [1977] KLR 143** clearly stated that the proviso to Section 207(2) of the Criminal Procedure Code enhances the necessity of being certain that an accused person wishes to admit without any qualification each and every essential ingredients of the charge. In this case the prosecutor simply stated that the stolen items were mentioned in the charge sheet. They were not identified and produced before the trial court.

In the end and for the above reasons I am convinced that the decision on conviction and sentence must be interfered with. The conviction is quashed and the sentence set aside as the plea is equivocal. The applicant, namely Isaack Mbege Mwandawiro, is hereby set free unless lawfully held.

Dated and delivered at Mombasa this 18th day of July 2008.

J.K. SERGON

J U D G E