

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Criminal Revision 23 of 2008

CHARLES OUMAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

The applicant herein, Charles Ouma, pleaded guilty to a charge of failing to comply fully and truthfully with Section 25(1) c of the Hotels and Restaurants Act, Chapter 494 Laws of Kenya Contrary to Section 25 (2) (b) of the same Act. He was then convicted and sentenced to six (6) Being aggrieved, he beseeched this court to invoke its supervisory jurisdiction to peruse the proceedings through a letter dated 8th July 2008. He claimed that the sentence pronounced is ambiguous as it did not state whether it is six days, months or years.

Pursuant to the provisions of Section 362 of the Criminal Procedure Code I called for and perused the proceedings of the subordinate court. This court is enjoined by law to call and examine the record of any criminal proceedings before any subordinate court for purposes 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 such subordinate court. I have perused the proceedings in respect of the matter before me and I am convinced that the order made by the sentencing magistrate on sentence is vague. It does not specify the period which the applicant should serve in prison. It only talks of six (6). There is no mention whether the applicant should serve six days or months or years. It is a well established principle of law that a sentence pronounced must be expressed with clarity. The one pronounced against the applicant is ambiguous. This court is entitled to step in to correct the error in exercise of its supervisory power of revision. I have perused Section 25 (2) b of the Hotels and Restaurants Act and it is clear that the penalty for an offence under Section 25 (1) c is a sentence of six months imprisonment or a fine of Kshs.5,000/-. The record shows that the applicant was a first offender. He pleaded guilty to the charge. It would go against the policy of sentencing to give such a person the maximum sentence. It is always the policy of courts that where there is an option of a fine, the convict should be given the option of paying a fine first rather than serve a custodial sentence. In this case I will set aside the imprecise sentence and substitute it with an order directing the applicant to pay a fine of Kshs.3,000/- in default to serve 1 month imprisonment.

Dated and delivered at Mombasa this 9th day of July 2008.

J.K. SERGON

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