

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

Criminal Revision 321 of 2006

YAHYA AWADH MBARAKAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

Yahya Awadh Mbarak herein after referred to as the applicant was tried and convicted for the offence of Malicious damage to property before the Resident Magistrate's Court. He was then sentenced to serve 2 weeks imprisonment plus a fine of Kshs.10,000 and in default to serve 3 months imprisonment. Pursuant to Section 363(2) of the Criminal Procedure, the proceedings in respect of Mombasa CM Cr. Case No. 3454 of 2006 was brought to my attention for perusal on revision.

The record shows that 3 witnesses testified in support of the prosecution's case before Mr. Gesora the learned Resident Magistrate. When placed on his defence, Yahya Awadh Mbarak opted to keep quiet. On the basis of the three prosecution witnesses, he was convicted and sentenced as aforesaid.

I have taken note of the fact that in exercising the supervisory jurisdiction given under Section 65(2) of the constitution and under section 362 of the Criminal Procedure Code this court is geared to satisfy 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 court subordinate to it. In the light of that I am obliged to consider the proceedings placed before me vis a vis the law in existence. I have already said that the record shows that the applicant was sentenced to serve 2 weeks imprisonment and to pay a fine of Kshs.10,000/- in default to serve 3 months imprisonment. He was also given 7 days to appeal. To begin with, I do not know why the learned trial Resident Magistrate handed both a prison term and a fine against the application. In my appreciation of the principles of sentencing the offence committed by the applicant is a misdemeanor by all standards. To slap such sentence against him cannot be justified. The record shows the trial magistrate did not attach any peculiar reasons as to why the applicant should pay a fine of Kshs.10,000/- in respect of the subject matter destroyed worth Kshs.270/-. In the circumstances the fine is inordinately high and inappropriate in this case.

Another aspect which comes out clearly from the proceedings is that the trial magistrate limited the time allowed to the applicant to appeal to 7 days from the date of judgment. That is contrary to the provisions of Section 349 of the Criminal Procedure Code.

In the end I am satisfied that the order on sentence should be interfered with. Consequently the order directing the applicant to pay a fine of Kshs.10,000/- is set aside. If any fine has been made, the same should be refunded forthwith. The order limiting the time to appeal to seven (7) days is set aside and substituted with an order giving the applicant 14 days right of appeal from the date of sentence.

For the avoidance of doubt, the applicant shall only serve 14 days in prison as from the date of sentence.

Dated and Delivered at Mombasa this 13th day of December 2006.

J.K. SERGON

J U D G E

