

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Revision 306 of 2006

ORIGINAL MSA CR. CASE NO. 4606 OF 2005

JOSEPH O. OPONDO.....APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

When J. B. Mdivo RM was hearing CMCr.C No. 4606 of 2006, Joseph Okello went into her court, as he says, to swear an affidavit before her. His telephone rang and the learned Resident Magistrate had it confiscated and ordered that it be sold by public auction and the proceeds thereof be deposited in the Poor Box. The Applicant has moved this court to revise that order and set it aside.

I have perused the proceedings in that case and it would appear that the Applicant was not accorded an opportunity to explain why he did not switch off his phone when in court. It is not only irritating but also contempt of court when anyone allows his or her phone to ring when the court is in session. However before taking any action the court should accord such person an opportunity to be heard. That having not been done in this case I hereby revise and set aside the learned magistrate's order of 18th April 2006 and order that the mobile phone be returned to the Applicant. The Applicant should, however, understand that it is contempt of court to interrupt court proceedings and if he again allows his telephone to ring in court he may easily end up in jail.

DATED and delivered this 15th day of May 2006.

D. K. MARAGA

JUDGE