

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

CRIMINAL REVISION CASE NO.2 OF 2000

NEMUEL ASSATI NYANGOKA APPLICANT

- versus -

REPUBLIC RESPONDENT

RULING

This matter has come before me under Revisionary Jurisdiction contained in Section 364 of the Criminal Procedure Code. The complainant Nemuel Assati Nyangoka was charged on 28/10/99 before the Chief Magistrate with the offence of failing to comply with a notice issued under Section 119 of the Public Health Act contrary to Section 115 as read together with Section 12(213) of the said Act.

He pleaded guilty and was fined KShs.80/- in default 1 month imprisonment. He was also to pay KShs.80/- per day until he abated the nuisance. The chief Magistrate also gave the tenants 30 days to move out of the premises to enable the Council to demolish them, but the tenants were not party to the case and were not in Court. They were served with notices but now they have refused to move out but the Applicant still pay the daily charges.

After studying the matter it would appear that the action of the tenants has caused inability of the Applicant to comply with the order to abate the nuisance. It was also an omission on the Court's part to have ignored the state the tenants had in the matter. I, therefore, propose to alter the sentence by the Chief Magistrate to read that sentence of KShs.80 per day be discharged and all the amount paid by the applicant in compliance with that limb of the order be refunded to the Accused/Applicant.

Then I order further that the Accused be heard in the application by the tenants now pending before this court.

Dated this 21st Day of September, 2000.

A.I. HAYANGA

JUDGE

Read in open Court to:- for Applicant.

State Counsel Ms. Kwena for Respondent.

By:- J. KHAMINWA

COMMISSIONER OF ASSIZE