



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL REVISION CASE NO. 539 OF 2020

LESIT, J

REPUBLIC..... PROSECUTOR

VERSUS

FREDRICK MUTUKU.....ACCUSED

(Being Revision of the Order in Judgment of Hon. Lilian Arika (SPM) in

Milimani Chief Magistrate's Criminal Case No. 1587 of 2017 dated 26th September, 2019)

RULING ON REVISION

1. The Learned Trial Magistrate in this case Hon. Lilian Arika, has made a formal request for review of finding made in this case as contained in her Judgment read in open court on 26th September, 2019.
2. I have perused the judgment of the Hon. Magistrate and I have found that the analysis and evaluation of the evidence led to a finding under the conclusion part of the judgment thus:

“D. CONCLUSION

It is unfortunate that despite the huge loss to the complainant, the evidence on record failed to meet the standard set. It would be unsafe to convict on the same, for the reasons given. The upshot of the foregoing is that the accused person is convicted under section 215 of the Criminal Procedure Code.

On the issue of the exhibits 9a, 9b and 9c being one hundred and twenty padlocks, the same were on 11th June, 2019 released back to the investigating officer. If no appeal is preferred within 14 days, the same to be released for use by the complainant.

HON. ARIKA

SPM

26/9/2019”

3. It is clear from the above excerpt that there is an error on the face of the record. The learned trial Magistrate concluded that it was unsafe to convict on the evidence on record but went ahead to enter a conviction under **section 215** of the **Criminal Procedure Code**. At the close of the judgment no sentence was passed, another indication that the Learned Trial Magistrate meant to acquit and not convict the accused person.
4. In exercise of the powers of revision under **section 362** and **section 364** of the **Criminal Procedure Code**, I correct the error on the face of the record by substituting the word ‘*convicted*’ in the said judgment with the word ‘*acquitted*’ under **section 215** of the **Criminal Procedure Code**.
5. In the result, the accused person stands acquitted of the charges he faced in that case.

DATED IN NAIROBI THIS 1ST JULY, 2020.

LESIT, J.

JUDGE