



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**CRIMINAL REVISION NO.131 OF 2018**

**DANIEL MUTUMA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From original conviction and sentence in Criminal Case No. 256 of 2018 of the Senior Resident Magistrate HON. L.N. MESA (SRM) at Marimanti delivered on 22/5/2018)***

**R U L I N G**

1. The applicant (Daniel Mutuma) in this matter was charged with the offence of House Breaking contrary to **Section 304(1)** of the **Penal Code** and stealing contrary to **Section 279(b)** of the **Penal Code** vide **Marimanti Principal Magistrate's Court Criminal Case No.256 of 2018**. He pleaded guilty to the charges and was convicted on his own plea of guilty and sentenced to serve 3 years for the first limb and 18 months for the 2<sup>nd</sup> limb of the charge.

2. The applicant has now moved this court for revision of sentence under **Sections 362 and 364** of the **Criminal Procedure Code** on the grounds that he was a student who dropped out of school for lack of school fees and that he should be given a chance to go and finish his education and begin his life afresh.

3. This application is supported by a defective affidavit which is neither sworn/commissioned or dated but this court nevertheless called for the lower court file in order to satisfy myself on the correctness, regularity, legality and propriety of the proceeding and sentence meted out against the applicant. I have perused the charge presented at the trial and have noted that the same was incompetent and bad for duplicity. The charge sheet presented to the trial court contained two distinct offences which though founded on the same facts ought to have been set up in separate count to enable the applicant know in sufficient detail what charge he was pleading to. The provisions of **Section 135(2)** of **Criminal Procedure Code** clearly stipulate as follows:-

***" Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count."***

A look at the charge sheet shows that the offence of House Breaking contrary to **Section 304(1)** and Stealing contrary to **Section 279(b)** of the **Penal Code** was combined making it difficult and embarrassing for the applicant to know exactly which offence was subject to the plea he was required to plead. This was an infringement on his Constitutional right as **Article 50(b)** clearly states that every accused has a right to fair trial and that includes right:

***" to be informed of the charge, with sufficient details to answer to it."***

This court in the premises finds that the accused was subjected to a mistrial because the charge sheet presented was defective and irregular for the aforesaid reasons and ought not to have formed the basis for his conviction. The conviction and sentence was irregular.

In view of the time he has spent in prison, this court hereby sets aside the sentence passed against him and direct that he be set free forthwith unless otherwise lawfully held.

**Dated, signed and delivered at Chuka this 4<sup>th</sup> day of March, 2018.**

**R. K. LIMO**

**JUDGE**

**4/3/2019**

Ruling dated, signed and delivered in presence of Momanyi for Respondent and Applicant in person.

**R.K. LIMO**

**JUDGE**

**4/3/2019**