

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISC. CRIMINAL APPLICATION NO.77 OF 2019

DENNIS OMOSA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. **Dennis Omosa** the appellant was charged before the Chief Magistrate's Court in **Criminal Case No.2195 of 2019** with the offence of manufacturing alcoholic drink without licence contrary to section 8(1)(B) as read with section 71 of the Kisii County alcoholic drinks control Act of the 2015.
2. The applicant was presented in court on the 2/9/2019 for plea. After the charge was read to him in Ekegusii he pleaded 'Ni kweli'. The records states that thereafter prosecution produced the exhibits and the court thereafter fined the applicant Kshs.50, 000/= in default 6 months.
3. No plea of guilty was entered by the trial court. No facts were read to the applicant. The trial court obviously failed to comply with the provisions of the law on taking a plea in section 207 of Criminal Procedure Code. In the case of **Adan v R (1973) E.A at page 445** the Court of Appeal clearly set out the procedure for taking plea when the accused pleads guilty as follows;

“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to “not guilty” and proceed to hold a trial. If the accused does not deny the facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, of course, be recorded”.

4. From the record the plea was equivocal. The conviction was illegal and is quashed. The sentence is set aside. The applicant is discharged. He is free to go unless lawfully held.

Dated, signed and delivered at Kisii this 11th day of November 2019.

R.E. OUGO

JUDGE

In the Presence of;

Mr. Otieno Senior Prosecution Counsel office of the DPP

Evans Court Clerk