



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL REVISION NO. 43 OF 2018**

**JUMA MWALENGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. Mombasa CMCCR No. 2292 of 2018 has been placed before court with a request for revision pursuant to sections 363, 364 and 365 of the Criminal Procedure Code.
2. I have perused the records of the trial court and it reveals to me that, it is not explicit in which language the charge was read and explained to the accused person.
3. It is equally evident that there was never a conviction entered against the accused person. Thirdly, the facts of the offence are not disclosed to have been read and explained to the accused person. Additionally he was not given the chance to mitigate a benefit of the law bestowed upon the accused by statute.
4. The failures and denials make the plea unequivocal and the taking and recording of such plea improper. For that impropriety, the entry of plea of guilty is set aside as well as the sentence melted out. It is ordered that the accused be produced before the trial court for purposes of taking the plea in a proper manner and in full observance of the law as established in the case of *ADAN VS REPUBLIC [1973] E.A. 445 at 446*. The requirements are that:-

**“When a person is charged, and the particulars should read out to him, so far as possible in his own language, but if that is not possible, then in the language which he can speak and understand. The magistrate should then explain to the accused person all the ingredients of the offence charged. If the accused then admits all the 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 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 alleged 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”.**

5. It is only necessary to add that, the work-load notwithstanding the requirement of the law on how to record a plea permits no shortcut. The adaptation of plea taking templates may be indeed valuable tools but where such is adopted it is desirable that it is adopted with utmost alacrity and circumspection so that all the critical and essential details are not left out or ignored.
6. Let this ruling be certified and transmitted to the trial court at the earliest possible opportunity by the Deputy Registrar.

**Dated and delivered at Mombasa this 10th day of April 2018.**

**P.J.O. OTIENO**

**JUDGE**