

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KABARNET
CRIMINAL REVISION NO. 1 OF 2017

REPUBLIC
V ERSUS
GRACE MABATUK.....ACCUSED

ORDERS ON REVISION

1. This is a ruling on revision of the order of the trial court in *Eldama Ravine Principal Magistrate's Court Criminal Case No. 1019 of 2015 Republic versus Grace Mabatuk* wherein the learned Magistrate convicted the accused on two counts of offensive conduct conducive to a breach of peace contrary to section 94 (1) of the Penal Code and refusing to permit finger prints to be taken contrary to section 55 (5) as read with section 129 of the National Police Service Act of 2011, and sentenced her to pay a fine of Ksh.5000/- and in default to serve 2 months imprisonment and Ksh.30000/- and in default six months imprisonment, respectively.

2. The file was initially forwarded for revision to the High Court at Nakuru by a letter from the trial court dated the 26th September 2016 but subsequently redirected to the supervising High Court at Kabarnet, where it was received on 18th January 2017.

3. The matter was reported for orders of revision by the trial magistrate herself indicating that she had post conviction and sentence discovered the error on the face of the record, and that the error was inadvertent. From the record of proceedings, the accused had upon a plea of guilty been convicted and sentenced for Count II by a previous trial Magistrate.

4. The principle of law involved is the *autrefois acquit and autrefois convict*, that a person cannot be tried for an offence for which he previously been acquitted or convicted. Article 50 (2) of the Constitution, which provides for the principle of *autrefois acquit and autrefois convict*, as follows:

“50 (2) Every accused person has the right to a fair trial, which includes the right—

(o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;”

See also section 279 of the Criminal Procedure Code.

5. The accused in this case had upon a plea of guilty to the second count at the plea stage been convicted and sentenced to pay a fine of Ksh.20,000/- and in default to serve an imprisonment term of 8 months. Although inadvertent, the subsequent trial, conviction and sentence for the second count along with the charge in the first count, which she pleaded not guilty is, on the *autrefois convict* principle, a nullity.

6. The Court has established from the court file that the accused had by receipt nos. 2686569 dated 13th October 2015 for Ksh.20000/- and already paid the fine in the first sentence on his plea of guilty in Count No. II. The accused had also deposited cash bail of Ksh.5000/- vide receipt no. B 469459 of 13th October 2015, which was upon judgment and sentence converted into a payment of the fine in Count No. I by order of the court of 26th September 2016.

7. Accordingly, pursuant to section 364 (1) (a) of the Criminal Procedure Code, the second conviction for the second count of refusing to permit finger prints to be taken contrary to section 55 (5) as read with section 129 of the National Police Service Act of 2011 is quashed and the sentence therefor of a fine of Ksh.30,000/- and in default imprisonment for 6th months is set aside. In accordance with section 367 of the Criminal Procedure Code, the Court shall certify its decision to the trial Court.

DATED AND SIGNED THIS 24TH DAY OF JANUARY 2017.

EDWARD M. MURIITHI

JUDGE