



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 112 OF 2015**

**(Appeal against Conviction and Sentence in Murang'a CM Criminal Case No 1302 of 2015 - J J Masiga, RM)**

**HELLEN WAMAITHA MAMBO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The Appellant herein, **Hellen Wamaitha Mambo**, was on 28/10/2015 convicted upon her own plea of **failing to attend court** contrary to **section 53(1)** of the **National Police Service Act**. She was sentenced to serve 3 months imprisonment. She appealed against both conviction and sentence. She was admitted to bail on 24/11/2015 pending disposal of the appeal. The main grounds of the appeal are that the charge was incurably defective, and that the plea was not unequivocal. Learned prosecution counsel for the respondent did not support the conviction for the same grounds advanced by the Appellants.

2. I have looked at the charge sheet and also perused the record of the trial court. The Appellant was charged under **section 53(1)** as read with **section 129** of the National Police Service Act, Cap 84. Section 53(1) states –

“53. Power to require bond for attendance of court

**(1) A police officer investigating an alleged offence (not being an offence against discipline) may require any person to execute a bond in such sum and in such form as may be required, subject to the condition that the person shall dully attend court if and when required to do so.**

**(2) A person who refuses or fails to comply with a requirement lawfully made under subsection (1) commits an offence.**

**(3) Notwithstanding the foregoing provisions, the powers conferred under this section shall be exercised in strict accordance with the Criminal Procedure Code (Cap 75).”**

Section 129 of the same Act is a general penalty provision.

3. It is not clear from the particulars of the offence in the charge whether the requirement to attend court was by a police officer or by court. But since the particulars say that he failed to attend court as an accused person, the requirement to attend court was probably by a warrant or summons or other order of court. In that case the particulars of the offence did not disclose the offence charged, and the charge was incurably defective. If on the other hand the requirement to attend court was by a police officer, the full particulars of that officer should have been given in the particulars of the offence.

4. Finally, the prosecutor only stated “facts as per the charge sheet” when invited by the court to give facts. That would be a reference to the particulars of the offence in the charge, which I have already found did not disclose the offence charged. I need not say more.

5. In the event, this appeal is allowed in its entirety. The conviction is quashed and the sentence set aside. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 3<sup>RD</sup> DAY OF NOVEMBER 2016**

**HPG WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 4<sup>TH</sup> DAY OF NOVEMBER 2016**