



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION NO. 12 OF 2014

ALICE VIOLA CHEBWOGEN.....APPLICANT

VERSUS

REPUBLICRESPONDENT

(Arising from Kericho CM Criminal Case No. 2045 of 2011)

RULING

The matter has been placed before me pursuant to the Provisions of **Section 362 Criminal Procedure Code** and the supervisory powers of the High Court as contained in **Article 165(6) and (7) of the Constitution**. I have called for the record i.e **Kericho CM. CR. Case No. 2045/11**. The basis of the complaint is what transpired on 18th August, 2014 before Hon. B. Limo Resident Magistrate.

On that day, Mr. Morigori for the accused therein applied that the court disqualifies itself after reviewing the accused person's bond terms. The court disallowed the application. Counsel then applied to withdraw from acting for the accused person. Apparently there were two other advocates appearing for the accused person. These were Mr. Mutai and Mr. Onganyi. The court then directed that the matter proceeds at 11a.m and it would rule on Mr. Morigori's application. The court went ahead and allowed the withdrawal by counsel.

At 10a.m the court pronounced itself as follows:

“The former counsel of the accused Mr. Morigori advocate could not sit down despite three(3) attempts as warning by the court to sit down after the court disallowed by oral application. The counsel is shouting to the court and the public sitting in court is agitated to bring order to the court. The advocate is hereby found to be disrespectful to the court and he is ordered to be taken to custody under the following punishment.

The advocate to pay a fine of a sum of Shs. 1,400/= in default one (1) month in jail”.

The paragraph above is very disturbing for the following reasons;

- i. **The court had indicated that the matter would proceed at 11a.m and the counsel was discharged from appearing for the accused.**
- ii. **Was Mr. Morigori part of the proceedings at 10a.m considering that he was no longer acting for the accused with the court's permission?**
- iii. **There is no record showing in what way Mr. Morigori had been disrespectful to the court.**

- iv. **Section 121(1) Penal Code lists down offences relating to Judicial proceedings. Section 121 (2) Penal Code provides for the manner these offences will be handled if committed in view of the court.**

The record is silent on what may have transpired in court on that day. From the paragraph quoted above its as if the court was giving a report of what had transpired and at the same time punishing the counsel.

- v. **Counsel was not informed of the offence he had committed. I am sure that if after being allowed to cease acting for the accused the counsel shouted in court, the court orderlies would have arrested him and charged him appropriately.**
- vi. **As I read the above paragraph I continue asking myself several questions like; where was Mr. Morigori when this pronouncement was being made? Was he in court or had he already left?**
- vii. **Judicial officers being court Managers are called upon to exercise a lot of restraint while carrying out their judicial function.**
- viii. **Advocates who are also officers of the court are expected to conduct themselves in a manner befitting their calling.**
- ix. **Whatever transpired in this matter was uncalled for and the trial magistrate should have not made the orders he did as the record does not in any way support his actions. It is unfortunate that this was happening in the presence of other counsels and members of the public.**

On behalf of the Judiciary I apologize to Mr. Morigori, who was embarrassed by the court.

The orders complained of are hereby reviewed and set aside. If any fine was paid by Mr. Morigori the same should be refunded to him forthwith.

A copy of this Ruling to be availed to Hon. Limo and Mr. Morigori.

The original file to be returned to the trial magistrate as it is pending Ruling.

Dated, signed and delivered this 2nd day of October, 2014.

H.I. ONG'UDI

JUDGE