



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Criminal Revision 179 of 2012**

**EUNICE AKINYI.....APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**REVISION**

The Application for revision is made by M/s Ogaro Orayo and Company Advocates for the applicant pursuant to Section 354, 362 and 364 of the Criminal Procedure Code. This is as a result of orders issued by the Honourable M. I. Shimenga, Resident Magistrate in Criminal Case No. 1646/2012.

The grounds relied on are that:

1. **THAT** the trial Magistrate erred in law by not following the due process of taking plea as outlined in the case law of **Adan v Republic (1973) EA.**
2. **THAT** the trial Magistrate erred in law by meting out an excessive custodial sentence bearing in mind she was the sole bread winner and provider to her four (4) children who are of tender years, the last born being aged only two years.
3. **THAT** the trial Magistrate erred in law and fact by convicting the applicant without noting the facts of the case and by relying on personal information provided by the prosecution.
4. **THAT** the trial magistrate hastened the trial and convicted the applicant without giving the applicant enough time and freedom to mitigate hence suppressing the applicant's constitutional rights.
5. **THAT** the trial magistrate erred in Law and fact by sentencing the applicant to six months imprisonment without offering an option of a fine.

It is also supported by an affidavit sworn by the Applicant.

Section 354 alluded to is in respect of powers to be exercised by the High Court after hearing an appeal hence not relevant at this stage as no petition of appeal has been filed in the instant matter.

Section 362 empowers this court to call for records for the subordinate court for the purpose of satisfying itself of the regularity of the proceedings before the court.

Section 364 is in respect of orders to be made upon revision.

I have perused the lower courts record and noted that the accused pleaded guilty to the charge. The issue would be on legality of sentence.

In the instant case, there is a finding and sentence.

A right of appeal was open for the Applicant. In the circumstances, taking into consideration provisions of Section 364 (5) of the CPC.

I decline to grant orders sought by way of Revision.

This court having exercised its discretionary power pursuant to Section 365 of the CPC it is ordered that this order be served upon M/s Ogaro Orayo.

**DATED** at **KERICHO** this 10<sup>th</sup> day of October, 2012

**LILIAN N. MUTENDE**

**RESIDENT JUDGE**