

REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL APPEAL NO. 230 OF 1986

BETWEEN

MUNYOKI MUTISYAAPPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from District Magistrate's Court at Kitui)

JUDGMENT

The appellant was convicted for possession of charms under section 5 of (cap 67) of the laws and sentenced to 12 months' imprisonment. The record shows that he pleaded guilty but that during mitigation he said he had a letter authorising him to operate charms.

His counsel has argued that the plea is not unequivocal.

It is doubtful whether the letter if it existed would have authorized him to practice charms so as to cause fear, annoyance or injury to anyone. Looking at the record however it appears that the facts supporting the charge were not recorded as they should have been the trial magistrate merely referring to the particulars on the charge sheet. Those particulars are in my view inadequate. Respondent do not disclose the precise circumstances of the alleged offence nor the identity of the person or persons against whom the charms were used by the appellant causing that person fear or annoyance or injury. The charge sheet refers to "fear, annoyance or injury to others". The persons comprised in the word "others" are not disclosed or identified.

I am therefore not satisfied that Justice has been done in this case. I will not order a retrial as the appellant has been in custody for 16 days prior to bail being granted.

In the result the conviction and sentence are quashed and set aside. Appeal is allowed.

Dated and delivered at Nairobi this 3rd day of July, 1987.

E.N.A TORGBOR

JUDGE