



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL APPEAL NO 234 OF 1987**

**MWANGANGI..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

August 10, 1987, **Torgbor J** delivered the following Judgment.

The appellant was originally charged with breach of the peace under section 95(1) of the Penal Code. Before the charge was due to be tried the appellant wrote a letter to the magistrate in which he referred to a land dispute between his family and that of the trial magistrate and which had been resolved in favour of the appellant and allegedly to the displeasure of the trial magistrate. The appellant expressed the fear that the magistrate was trying to imprison the appellant “through the framed case of disturbance” with which he had been charged. He told the magistrate not to use force to gain or obtain the land and expressed this desire for the law to taken its cause. That was the effect of his letter. The magistrate formed the view that the letter was aimed at lowering his authority and was thereby contemptuous and thereafter ordered a charge of contempt to be preferred against the appellant which charge was tried by the magistrate himself and upon conviction sentenced the appellant to 9 months imprisonment.

The immediate impression one gets on perusing the record is that justice has not been done in this case.

The record shows that upon the charge of contempt being read to the appellant he stated *in te alia* that he admitted writing the letter complained of but that he did not want the magistrate to try the case, that he believed also that the ‘court is following me to put me in prison”. In spite of this statement the magistrate proceeded to record a plea of guilty.

Again in his mitigation plea the appellant confirmed that he wrote the letter in question but that he did so to give information. Again the effect of that statement appeared to have been lost on the trial magistrate.

It is apparent to this court that the appellant who admitted writing the letter did so in the honest belief that , because the magistrate lost the land case, the letter was aggrieved by the loss and was thereafter doing his best to harass the appellant. Because of the history of a land dispute between he appellant’s family and the magistrate it would have been desirable for the said magistrate to either of this own accord or upon hearing what the appellant said when the contempt charge was read to him to transfer the entire case to another court. Regretably he did not do so. In the result he became complainant as a versus the contempt charge, prosecutor and judge all ruled into one. Justice under the law does not permit one person to play all three roles. I find therefore that the trial magistrate acted in error.

The record shows that on July 30, 1987 the prosecution applied to withdraw the “disturbance” charge against the appellant but the magistrate refused. Although the reason he gave for refusal of the application with reference to section 87 of the CPC was technically sound I am not satisfied bearing in mind the history of this case and the land dispute case that the said charge should proceed.

I have read the grounds of appeal in this case and am satisfied that there is cause for the appellant to be aggrieved by the way and manner at in which his trial was conducted and that the cause of justice would

not be properly served by his conviction and sentence.

Accordingly the convicting and sentence for the contempt charge imposed by the trial court are quashed and set aside respectively and the appellant is forthwith be released from jail unless he is otherwise lawfully held.

Further it is directed that the charge of creating disturbance in a manner likely to cause a breach of the peace under section 95 (1) of the PC should no longer proceed and may be formally withdrawn before the lower court for the reason stated above.

But I conclude this judgment with a stern warning to the appellant not in future to write any letter to the court that is likely to cause offence to any officer of the court and to ensure from now on that he stays on the right side of the law.

Order accordingly.

**August 10, 1987,**

**TORGBOR**

**JUDGE**