

Republic of Kenya

High Court at Nairobi

Todd J

Criminal Appeal No 786 of 1982

Marenya v Republic

January 25, 1983 Todd J delivered the following Judgment.

The appellant Nahashon Marenya was charged before the trial magistrate in the district magistrate's court at Kibera for failing to comply with a curfew restriction order said to have been made under section 9(1) of the Public Order Act, which deals with such orders made by police officers in charge of police in provinces or police officers in charge of police divisions. The particulars of the charge do not mention this as this matter, I think, ought to have been mentioned and no mention or reference is made to this order, again as I think this ought to have been done. No mention of such matters, I think, can lead to confusion. I am informed that in fact no curfew restriction order was made by any police officer, though there was an order made by the Provincial Commissioner dated August 20, 1982, published in the official Gazette on August 27, 1982 and I am asked by state counsel to confirm the conviction entered against the appellant, by substituting a charge under section 8(1) of the Public Order Act in place of section 9(1) which is similar in terms.

As I have also said the charge as framed is confusing and it is vague, and that being so, I do not think it can be said that it would be free from doubt that these irregularities would not occasion a failure of justice. Charges and particulars should be clearly framed so that accused persons know what they are charged with and proper references should also be made, otherwise confusion may arise and if confusion can arise it cannot be said that failure of justice may or may not have occasioned. I think in this case it would be fair in all the circumstances if the appeal was allowed and so I allow the appeal, quash the conviction and set aside the sentence imposed. If the fine has been paid then I order that the same be refunded to the appellant.

January 25, 1983