



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Indama v Republic (Criminal Revision E113 of 2025)
[2025] KEHC 16237 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL REVISION E113 OF 2025
DR KAVEDZA, J
NOVEMBER 11, 2025**

BETWEEN

SYLVESTER INDAMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged before the trial court with the offence of Stealing of a Motorcycle Contrary to Section 278A of the Penal Code. The charge sheet initially contained an alternative count of Conspiracy to Commit a Felony Contrary to Section 393 of the Penal Code. However, the record demonstrates that the said alternative charge was struck out prior to plea. It was neither read to the accused nor did it form part of the charges to which he was called upon to respond. The printed copy of the charge sheet uploaded on the Judiciary Case Tracking System clearly bears the markings “cancelled”, and the copy filed in court similarly indicates that the alternative count was deleted.
2. The applicant was supplied with a copy of the charge sheet that contained only the principal count of stealing. He accordingly pleaded not guilty to that single charge and throughout the trial defended himself solely against it. The prosecution evidence, cross-examination, defence testimony, and final submissions all related exclusively to the charge of stealing, not conspiracy.
3. On 14th October 2025, when the trial court delivered its judgment, it erroneously stated that the accused had been charged with two counts and proceeded to acquit him of the main count of stealing but convict him on the alternative charge of conspiracy to commit a felony. That conviction was entered on a charge that had not been read, explained, or responded to by the accused, and on which he had not been given an opportunity to mount a defence.
4. Upon review of the entire record of proceedings, it is evident that the conviction was made in breach of the fundamental right to a fair trial guaranteed under Article 50 of *the Constitution*. The accused was



convicted of an offence that was neither properly before the court nor subjected to trial in accordance with law. The trial court in effect convicted the applicant on a non-existent charge.

5. Having carefully examined the record of proceedings, it is evident that the trial was conducted in a manner that violated the applicant's right to a fair trial as guaranteed under Article 50 of *the Constitution*. The accused was never informed of the nature of the charge that resulted in his conviction, was denied an opportunity to respond to it, and was convicted on the basis of an irregular and defective charge sheet. Such proceedings cannot be said to have been fair or conducted according to law.
6. Section 382 of the Criminal Procedure Code provides:

“Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has in fact occasioned a failure of justice.”
7. In this case, the error and irregularity were not merely procedural but went to the root of the trial. The applicant was convicted on a non-existent charge. This constitutes a gross miscarriage of justice and amounts to a mistrial. The irregularity occasioned a complete failure of justice, as the conviction was entered without due process and in violation of the most basic tenets of criminal adjudication.
8. In view of the foregoing, this court finds that the proceedings before the trial court were fatally defective and that the conviction of the applicant was unlawful. The conviction on the alternative charge of Conspiracy to Commit a Felony Contrary to Section 393 of the Penal Code is hereby quashed.
9. The revision application dated 14th October 2025 is allowed. The applicant is acquitted and shall be released forthwith unless otherwise lawfully held.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF NOVEMBER 2025

D. KAVEDZA

JUDGE

