



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E218/2025

ALFAN TSUMA VS THE REPUBLIC

RULING

The applicant referred this matter to the High Court and urged that the Chief Magistrate's Criminal Court File No. E1142 of 2025, Republic v. Alfán Tsuma, be called for and placed before the Honourable Judge for revision of the orders made on 15th August 2025. The application was brought pursuant to Sections 362 and 364 of the Criminal Procedure Code, Cap 75, Laws of Kenya.

THE CHARGE

The accused was charged with Stealing a Motorcycle contrary to Section 278A of the Penal Code.

Particulars of the offence were that on 13th June 2025, at Miritini area, Jomvu Sub-County within Mombasa County, the accused, jointly with others not before the court, stole a motorcycle make TVS, Registration Number KMGM 255, red in colour, valued at Kshs. 220,000, the property of MOGO AUTO LIMITED.

COUNT II: Handling Suspected Stolen Property contrary to Section 322(1) of the Penal Code.

Particulars were that on 14th August 2025, at Jomvu Kuu area of Jomvu Sub-County, otherwise than in the course of stealing, the accused dishonestly undertook the retention of a motorcycle chassis frame number LZL12PIA7MH51244, make Haojin, red in colour, knowing or having reason to believe it to be a stolen motorcycle.

The matter came before the trial court for plea. The accused pleaded guilty. However, during mitigation, he denied committing the offence. Despite this, the court entered a plea of guilty and sentenced him to three (3) years' imprisonment without the option of a fine.



The applicant submitted that the plea was not unequivocal and urged the court to set aside the conviction and have a plea of not guilty entered.

The mitigation by the accused was as follows:

“I was found with the bike. It was not mine; I had asked someone to work, he gave me. I tried to explain who had the bike, but the officer refused. I did not know it was stolen.”

It is evident that the applicant negated his plea of guilty. The trial court therefore erred in proceeding to convict and sentence him on an equivocal plea.

FINDING

Accordingly, the court finds that there was an error apparent on the face of the record. The conviction and sentence entered against the applicant are hereby set aside.

ORDERS

1. The conviction and sentence in Criminal Case No. E1142 of 2025 are set aside.
2. The applicant shall be presented before the Chief Magistrate’s Court for directions and for a fresh plea to be taken on 8/12/2025

Orders accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF NOVEMBER 2025.

JUDGE

WENDY KAGENDO

IN THE PRESENCE

THE APPELLANT IN PERSON

MR NGIRI FOR THE STATE

COURT ASSISTANT BEBORA

MR MKAN TO BE ALERTED

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.



