



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

Criminal Revision 2 of 2009

ISAIAH CHENGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

REVISION

By a letter received in court on 30th November, 2009, Ms Kendagor for the applicant asked the court to exercise its powers under section 362 and/or 364 of the Criminal Procedure Act (Cap 75) Laws of Kenya to call and examine the record of proceedings in Kapenguria Principal Magistrate Criminal Case 1076/2009 – REPUBLIC Vs ISAIAH CHENGO.

From the record of proceedings, the accused was arrested on 14th November 2009 and arraigned in court on 18th November 2009. He was charged on the same day with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. He pleaded guilty and was committed on his own plea to a sentence of 5 years imprisonment.

His advocate, Ms Kendagor has raised two issues for consideration of the court.

- (i) That the plea was unequivocal
- (ii) That the applicant was and is not of sound mind.

I invited Mr Mutuku, learned state counsel, to reply to the issues raised by counsel on behalf of his client. Mr Mutuku submitted that the plea was equivocal. However, he raised concern regarding failure of the court to enquire into the mental condition of the accused as at the time of the alledged commission of the offence in terms of the provisions of section 162(1) of the

Criminal Procedure Code.

Section 162(1) of the Criminal Procedure Code provides:

“When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness”.

The learned state counsel was further of the view that the conviction should be set aside and sentence of 5 years be reviewed. The accused should be sent back for retrial before a Kapenguria court by a different magistrate other than Ms Washika.

I have carefully scanned through the proceedings. Having done so, I take the view that the mental condition of the applicant having not been disclosed at the time of the plea, the learned Resident Magistrate should have made enquiry as to whether the accused knew what he was pleading.

Accordingly, the only order that commends itself to me is the order for a retrial before the Principal Magistrate Kapenguria. The accused will have to plead afresh to the charge. An enquiry will have to be made under section 162(1) as to his mental condition. Towards that end the accused shall be produced before the said magistrate on the day of 10th day of December, 2009. In the meantime he will be in custody until then at Kapenguria G.K. Prison.

A copy of this order to be served upon the Principal Magistrate Kapenguria for compliance.

Dated and delivered at Kitale this 1st day of **DECEMBER** 2009.

N.R.O. OMBIJA

JUDGE



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