

**IN THE HIGH COURT OF ZANZIBAR**

HOLDEN AT VUGA

CRIMINAL REVISION NO. 3 OF 2012

FROM ORIGINAL CRIMINAL CASE NO. 235 OF 2012 OF

DISTRICT COURT MWANAKWEREKWE

ALI HAJI KASSIM

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APPLICANT  
(ORIGINAL ACCUSED)

**V E R S U S .**

D.P.P.

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RESPONDENT  
(ORIGINAL COMPLAINANT)

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**R E V I S I O N .**

Rabia H. Mohamed, J.

The Applicant, **ALI HAJI KASSIM** who is the Applicant herein has filed an application for revision. To understand the basis of this application it will be worthwhile to recount herein brief the facts that led to it.

Before the District Court at Mwanakwerekwe Applicant was charged with two counts, that is of house breaking contrary to section 297 (i) (a) and theft contrary to sections 267 (i) and 274 (i) of the Penal Act No. 4 of 2004.

The charges was read-over and well explained to the Applicant who pleaded guilty to the first offence by saying "Nakubali Mheshimiwa". As a result of this plea Applicant was found guilty and sentenced to serve the Educational Centre for a period of eighteen months.

In his application the Applicant has brought five reasons for the decision of the District Magistrate to be revised. These reasons are as follows:-

1. Kwamba Muombaji aliingia Chuoni akiwa mzima wa afya na alipata maradhi akiwa chuoni akitumikia adhabu yake.
2. Kwamba Muombaji amelazwa Hospital Kuu ya Mnazimmoja akisumbuliwa na marathi tofauti (hawezi kufanya chochote), kuwepo kwake Chuoni ni mzigo kwa Chuo na akiwa uraiani atapata masaada wa hali na mali kwa jamaa zake.
3. Kwamba, Muombaji anaiomba Mahkama tukufu ione kuwa muda aliotumikia unatosha kuwa fundisho kwake.

4. Kwamba, Muombaji hana kumbukumbu yoyote ya makosa ya zamani hivyo anatahili kufanyiwa mapitio kutokana na hali yake.
  
5. Kwamba, Muombaji pamoja na kufanyiwa mapitio hayo anaambatanisha na vyeti vya maradhi yanayomkabili.

Seeing all sixth grounds filed by the Applicant for the decision of the District Magistrate to sentence the Applicant to serve the Educational Centre for the period of eighteen months to be revised.

The word "revision" has been defined in the Black's law Dictionary, 8<sup>th</sup> Edition at page 1346 to mean "A re-examination or careful review for correction or improvement. Looking at the meaning of the word revision and the grounds raised by the Applicant I don't see any of them which moved this court to revise the decision of the District Magistrate.

Having discussed the above and due to the facts that the records of the District Court are before me I have decided to invoke my powers on revision suo motu as provided under Section 375 of the Criminal Procedure Act No. 7 of 2004 and Section 8 (3) of the High Court Act No. 2 of 1985.

Having looked at the records of the District Court which shows that on 29<sup>th</sup> June, 2012 the charge was read over and well explained to the accused. In the first count accused replied as follows: "Nakubali Mheshimiwa". After that a plea of guilty was entered. In relation to the second count accused person pleaded not guilty whereby plea not guilty was entered by the court. The case was then adjourned to 12<sup>th</sup> July, 2012 and 17<sup>th</sup> July, 2012 where the facts were narrated to the court. After the facts were narrated to the court accused person replied. "Nakubaliana na facts". Because of that the accused person was convicted by the court and sentenced to serve the Educational Centre for the period of eighteen months.

The law required plea of guilty to be unequivocal before an accused person is convicted and sentenced as required. Having said this I asked myself whether the words "Nakubali Mheshimiwa" and "Nakubaliana na facts" can be taken as an unequivocal plea.

According to section 297 (i) of the Penal Act No. 6 of 2004 accused person was charged, in the first count, with the offence of breaking and entering a human dwelling with the intention of committing an offence therein. This section reads:-

*" 297 (i) Any person who – (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or is guilty of the felony termed" housebreaking" and is liable to imprisonment for a term not exceeding ten years".*

After the charge was read over and well explained to the accused person he was supposed to admit or deny every element of the charge unequivocally. This position was discussed in the case of Buhimila Mapembe V. R [1988] TLR 174 and the case of Kato Vs. R (1971) HCD 364 whereby the court had this to say: in a plead which was entered from the words "it is true":-

*"The words is true" when used by an accused person may not amount to a plead of guilty. ....  
In any case in which a conviction is likely to proceed on a plea of guilty ..... it is most desirable not only that every constituent of the charge should be explained to the accused but that he should be required to admit or deny every constituent and that what he says should be recorded in a form which will satisfy an appeal court that he fully understood the charge and pleaded guilty to every element of it unequivocally".*

It is very clear in the presence case that the accused person did not plead to every element and constituent of the charge.

In the result the conviction against the accused person is accordingly hereby quashed and sentence set aside. The accused person shall be released from custody forthwith unless otherwise lawful detained.

Sgd: Rabia H. Mohamed

Judge

11/12/2012.

**Court:** This order was delivered this 11<sup>th</sup> December, 2012 in the presence of State Attorney **SULEIMAN MASOUD** for the Director of Public Prosecutions. It was informed to this court that the accused person is admitted at Mnazimmoja Hospital.

Sgd: Rabia H. Mohamed

Judge

11/12/2012.

**I hereby certify that this is a true copy of the Original.**

Sgd. **GEORGE J. KAZI**

REGISTRAR

HIGH COURT

**ZANZIBAR.**

***/Maulid:***