



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL REVISION NO.106 OF 2020

GABRIEL KAMAU.....APPLICANT

VERSUS

REPUBLICRESPONDENT

(Revision of the Original Sentence dated 08.05.2020 in Nanyuki Criminal Case No.403 of 2020 – L. Mutai, CM)

27.05.2020

Before Justice H P G Waweru

In Chambers

ORDER ON REVISION

1. Upon request by the advocates for the Convict herein, Messrs Kiget & Company, Advocates, by their letter dated 18.05.2020 addressed to the court, I have called for and examined the record of the trial court.
2. The Convict, GABRIEL KAMAU, was convicted upon his own plea of *Breach of Curfew Order contrary to Order 3 of the Public Order (State Curfew) Order, 2020* as read with *Section 8(6) of the Public Order Act, Cap 56*.
3. On 08.05.2020 the Convict was sentenced to six (6) months imprisonment.
4. The particulars of the offence were set out in the charge sheet as follows -

“.....on the 8th day of May, 2020 at about 10:00 am at Makutano area along Nanyuki/Meru Road, Meru Countyhaving not been listed in the schedule to the Public Order 2020was found unlawfully travelling along the said road from Nairobi towards Meru direction in a motor vehicle registration number KBN 813V, Isuzu NPE without proper authorization in contravention of the said act.”
5. **To begin with, the offence set out in the above particulars is not to be found in the Public Order (State Curfew) Order, 2020 (Legal Notice No.36 of 2020). That Order declared a nation-wide curfew between the hours of 7:00 pm and 5:00 am. The Convict herein was found on the road at 10:00 am – that was outside the curfew hours.**
6. If it was intended to charge the Convict with unlawfully leaving the Nairobi Metropolitan Area, that would be an offence under Order 3 of the PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (NAIROBI METROPOLITAN AREA) ORDER, 2020 (Legal Notice No.51 of 2020) as read with Rules 4(1) and 11 of the PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES, 2020 (Legal Notice No.50 of 2020) and also Section 36 of the Public Health Act, Cap 242.
7. The charge as laid was thus incurably defective for not disclosing the offence charged.
8. The Convict was wrongly convicted, notwithstanding that he pleaded guilty.
9. In the circumstances the conviction is hereby quashed and the sentence imposed set aside. The Convict shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 27TH DAY OF MAY, 2020

H.P.G. WAWERU

JUDGE.

DEPUTY REGISTRAR

NANYUKI HIGH COURT