



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**CRIMINAL REVISION NO.56 OF 2018**

*(From original conviction and sentence in Criminal Case No. 46 of 2018 in*

*Senior Resident Magistrate's Court at Tamu passed by Hon. E.M.Onzere- SRM).*

**HELLEN ADHIAMBO OLUOCH.....APPLICANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. This revision was brought by way of applicant’s letter received on 27.2.18 in which she seeks release of three gaming machines forfeited to the state on the ground that she is the owner of the machines.
2. The brief background of this matter is that Bernard Otieno& 4 others were jointly charged with gaming in unlicensed premises contrary to section 14(2) of the Betting, Lotteries and Gaming Act Cap 131 Laws of Kenya (*the Act*). The 5 pleaded guilty on their own plea of guilt. They were convicted and each was finedKshs. 1,000/- in default to serve 1 month imprisonment.
3. Three gaming machines which were used in the commission of the offence were produced as exhibits 1, 2 and 3. The learned trial magistrate ordered that the same be forfeited to the state.
4. The order of forfeiture provoked this revision. The powers of the High court in revision cases are contained in Section 362 through to 366 of the Criminal Procedure Code (cap.75). Section 362 specifically provides as follows:-

***“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.***

5. What the High Court can do under its revision jurisdiction is stated under section 364 of the Criminal Procedure Code Cap 75, which states as follows:-

***“364.(1) in the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may -***

***(a) .....***

***(b) in the case of any other order than an order of acquittal, alter or reverse the order.***

5. Section 67 *the Act* gives power to court to deal with anything produced to it in the following terms:

***‘‘ The Court by or before which any person is convicted of any offence under this Act may order anything produced to the Court and shown to the satisfaction of the Court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the Court may order’’***

6. I have perused the record of the Lower court for the purpose of satisfying myself as to the legality, correctness or propriety of the same. I

find that the trial magistrate's power of forfeiture of the 3 machines used in connection with the offence was lawful and judicious.

7. Consequently, this court declines the invitation to revise the lower court's order in favor of the applicant.

**DATED AND DELIVERED THIS 22<sup>nd</sup> DAY OF March 2018**

**T. W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant - Felix/Carolyne

Applicant -N/A

For the State -N/A