



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

CRIMINAL REVISION NO. 1 OF 2018

FROM ORIGINAL CONVICTION AND SENTENCE IN

CRIMINAL CASE NO. 429 OF 2017 OF THE

PRINCIPAL MAGISTRATE'S COURT

AT MARIMANTI

JOHN KIRIMI KIBARA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

This court has considered the application for revision though not dated was filed on 24th January, 2018. The grounds upon which the application is premised are:

- (i) The sentence is harsh as the fine is too high to be afforded by the applicant.***
- (ii) That the applicant has children and a wife who depend on him for upkeep and shelter.***

The Respondent has not opposed this application on a more fundamental ground which is the legality of the sentence given that the matter was tried before a Resident Magistrate contrary to the Law (**Section 2 of the Alcoholic Drinks Control Act No. 4 of 2010**) which specifically provides that the jurisdiction to try such cases is bestowed upon a magistrate who is a rank above that of a Resident Magistrate. That being the correct position of the law, obviously the proceedings leading up to the conviction of the applicant herein was conducted in appropriately/irregularly before a court bereft of jurisdiction to try matters under **Alcoholic Drinks Control Act**. This rendered the conviction and sentence a mistrial and under the powers granted to this court under **Sections 362 and 364 of the Criminal Procedure Code**, this court hereby allows this application and set aside both conviction and sentence handed over to the applicant in the lower court. The applicant shall be set free forthwith unless he is lawfully held. This court however advises the applicant to be of good conduct and avoid committing the same offence in future because next time he may not be this lucky.

Dated, signed and delivered at Chuka this 23rd day of May, 2018.

R.K. LIMO

JUDGE

23/5/2018

23/5/2018

Ruling delivered in the presence of Applicant in person and Respondent represented by Machirah.

R.K. LIMO

JUDGE

23/5/2018