

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL REVISION NO. 31 OF 2018

REPUBLIC.....APPLICANT

-VERSUS-

JOSEPH KIPNGENO.....1ST RESPONDENT

RICHARD MARENJE.....2ND RESPONDENT

JAMES KEERA3RD RESPONDENT

(Being Revision of the Order of the Resident Magistrate dated 18th January, 2018 in the Chief Magistrate Court at Narok, in Criminal Case No. 66 of 2018, Republic V. James Kipngeno & 2 Others).

ORDER ON REVISION

1. This matter has been reported by the Chief Magistrate (Hon. W.A. Juma) for orders in respect of the order of the learned Resident Magistrate (Hon. A.N. Sisenda) in which she convicted the respondent on his own plea of guilty for being drunk and disorderly contrary to Section 33 (i) (ii) of the Alcoholic Drinks Control Act No. 4 of 2010. She then proceeded to sentence the respondent by placing him on a community service (C.S.O.) for one day at a place to be designated by the probation officer. This is irregular for a community service order is a sentence, which must indicate the specific place, where the accused is to perform the service and the conditions, which he is required to observe. Moreover, community service for one day is too short a period to have any deterrent or rehabilitative effect on the offender.

2. In her report to this court the Chief Magistrate has indicated that the trial court lacked jurisdiction to entertain and determine this matter. In this regard, the definition of “magistrate” in the interpretation section of the Alcoholic Drinks Control Act in section 2 means “**A magistrate who is above the rank of the Resident Magistrate.**”

3. It therefore follows that Hon. Sisenda who holds the rank of Resident Magistrate did not have jurisdiction to entertain and determine this matter.

4. It also follows that the order made by the learned resident magistrate is null and void.

5. In the circumstances both the conviction and sentence are hereby quashed.

6. If the fine was paid it should be refunded.

7. Orders accordingly.

Order on revision dated this 30th day of November, 2018

J.M. BWONWONGA

JUDGE

30/11/2018