

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL REVISION CASE NO. 7 OF 2017

REPUBLICAPPLICANT

VERSUS

EDWARD MBUVI.....RESPONDENT

RULING

1. This file was forwarded to me from Kyuso Principal Magistrate's Court for purposes of Revision as the **Hon. J. Aringo** imposed an illegal fine in the matter.

2. **Edward Mbuvi** was charged with the offence of **Being Drunk and Disorderly** contrary to **Section 33(1)** as read with **Section 33(2)** of the **Alcoholic Drinks Control Act 2010**. Particulars of the offence were that on the **19th** day of **June, 2017** at **Kyuso Law Courts Premises** and **Probation Offices** in **Kyuso Location, Kyuso Sub-County** within **Kitui County** was found being drunk and disorderly person by shouting and staggering due to drunkenness.

3. He admitted the charge at the outset. He was convicted and fined **Kshs. 5,000/=** or to serve **two (2) months imprisonment** in default.

4. In his letter seeking Revision of the matter the trial Magistrate wrote that he erroneously wrote **Kshs. 5,000/=** instead of **Kshs. 500/=** being the maximum fine set by statute.

5. **Section 33(2)** of the **Alcoholic Drinks Control Act 2010** provides thus:

“(2) Any person convicted of being drunk and incapable or drunk and disorderly in or near a place referred to in subsection (1) shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both.”

6. The sentence imposed is illegal. Therefore I do set aside the sentence and substitute it with one of **Kshs. 500/=** or **14 days imprisonment** in default.

7. The excess amount if paid shall be refunded to the offender.

8. It is so ordered.

Dated, Signed and Delivered at Kitui this 23rd day of August, 2017.

L. N. MUTENDE

JUDGE