

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL REVISION NO. 2 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL THETU MAINA.....1ST ACCUSED

JEREMIAH MUANJERA KINYANJUI.....2ND ACCUSED

ORDER ON REVISION

The accused persons, namely, Samuel Thetu Maina and Jeremiah Muanjera Kinyanjui were jointly charged with two counts of the offence of assault contrary to **Section 251** of the **Penal Code**. They denied the offence and the hearing commenced before Mr. Mayova District Magistrate II, Professional. On 19/10/2010, the prosecutor applied to substitute the charge with the offence of grievous harm, contrary to **Section 234** of the **Penal Code**. The magistrate proceeded with the hearing to its conclusion. When he adjourned to write the judgment, he noted that he lacked jurisdiction to hear and determine that case.

Upon conviction, one found guilty of the offence of grievous harm is liable to imprisonment for life. A District Magistrate II can only pass sentence as prescribed under **Section 7** of the **Criminal Procedure Code**. Under **Section 7(3)(a)** of the **Criminal Procedure Code a DM II** can only pass sentence of a term not exceeding 2 years imprisonment. The trial magistrate had no jurisdiction to try the accused persons. This court therefore invokes its revisionary powers under **Section 362** of the **Criminal Procedure Code** and sets aside the proceedings of the District Magistrate II and directs that this file be placed before a magistrate of competent jurisdiction for hearing and determination. Mention before the Chief Magistrate on 10/2/2011 for directions.

DATED and DELIVERED this 3rd day of February, 2011.

**R.P.V. WENDOH
JUDGE**