



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Revision 64 of 2008**

1. Criminal Division
2. Court vacation
3. Revision
  - a) Trial magistrate:-
    - i) Convicts and sentences two accused, after trial, to a fine, on two counts, in default to imprisonment.
    - ii) The sentence of imprisonment ran concurrently.
    - iii) In sentences of a fine the term of imprisonment in default always runs consecutively NOT concurrent.
    - iv) Magistrate made orders of concurrent imprisonment.
4. Held:
  - a) The correct position is sentence must run consecutively for sentence of fines.
  - b) Revision allowed.
5. Case Law – Nil
6. Advocates: Nil

(From Original conviction and sentence in criminal case No. 40 of 2008 at Resident Magistrates Court at Limuru A.O. Aminga)

**PAUL TATIZO MUSAI .....1<sup>ST</sup> APPLICANT**

**PATRICK ODOYO JABUYA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**RULING**

**REVISION**

**I: Procedure**

I: Under section 362 of the Criminal Procedure Code, the High court has powers to:-

“Call for and examine the record of any criminal proceeding 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 proceeding of any such subordinate Court.”

2. No party has any right to be heard either personally or by an advocate before the High Court when exercising its powers of revision.” [Section 365] unless the court may wish to hear the person personally or through their advocate .....

3. A party or his advocate may write a letter to the Deputy Registrar High court of Kenya, Criminal Division and bring the attention of the illegality so done by the subordinate court. No application is drawn up by the party or his advocate.

**II: Letter**

4. The letter is filed then placed in a revision file before the Hon. Judge for orders Suo moto.

5. In the letter before me as placed by the Deputy Registrar two convicts appeared before the trial magistrate convicted and were sentenced for the offence of:--

“I: Trafficking of Cannabis Sativa contrary to section 3(1) (2) of the Narcotic Drugs and Psychotropic Substances Control Act No.4 of 1994

II: Being in possession of Cannabis Sativa contrary to section 3(1) (2) of the Narcotic Drugs and Psychotropic Substance Control Act No. 4 of 1994 .

6. A sentence of Ksh.1 million ID 10 years imprisonment and Ksh.300,000/- ID 3 years imprisonment, was imposed by the Hon. Magistrates, after trial. The magistrate further stated that in default, sentence to run concurrently.

7. The prison department brought a revision letter to correct the error by the trial magistrate for only one of the prisoner.

8. The error that occurred, is in a situation where there are more than one count and the sentence is a fine, at all times the default sentence being imprisonment must run consecutively and not concurrently.

9. The request to correct the illegality to the said sentence is hereby granted by this court.

10. It is hereby ordered that the sentences of imprisonment for both convicts be in default the sentences to run consecutively.

DATED THIS 8<sup>TH</sup> DAY OF AUGUST 2008 AT NAIROBI.

**M.A. ANG’AWA**

**JUDGE**

