



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Revision Case 81 of 2006**

**REPUBLIC .....APPLICANT**

**VERSUS**

**SAMUEL NGETICH .....RESPONDENT**

**ORDER ON REVISION**

The respondent, Samuel Ngetich was charged with being drunk and disorderly contrary to section 42 (1) of the Liquor Licensing Act (Cap 121 Laws of Kenya). The particulars of the offence were that on 15<sup>th</sup> April, 2006 at Kapande Estate in Bureti District, the respondent was found being drunk and disorderly, in that he was staggering shouting abusive words to other members of the public. When the respondent was arraigned before the trial magistrate's court for plea, he pleaded guilty to the charge. He was convicted on his own plea of guilty and remanded in custody for a day pending the submission of the Community Service Officer's (CSO) report. However, when the committal warrants were being prepared by the clerk to the magistrate for the respondent to be kept in custody for the day pending the presentation of the CSO's report, it was recorded that the respondent had been fined Kshs.1800/- or in default sentenced to serve one month imprisonment. Instead of being remanded in custody for a day, the respondent was thus, on paper, committed to serve a jail term.

The trial magistrate did not realise this mistake. On the following day, the respondent was produced in court. The trial magistrate placed the respondent on three months probation. The trial magistrate did not realise that the record of the court reflected that he had ordered the respondent to serve two mutually exclusive and contradictory sentences. Upon his visit to the prison, he realised the mistake that he had made. He now requests the court to invoke its jurisdiction under the provisions of sections 362 and 364 of the Criminal Procedure Code and revise the earlier order recorded that he had fined the respondent Kshs.1800/- or in default he was to serve one month imprisonment.

I have carefully considered the explanation given by the trial magistrate. It was evident that the trial magistrate made an honest mistake. It is for that reason that this court hereby invoke its said revisionary jurisdiction and call the record of the trial magistrates court in respect of Sotik RM C CR case No. 817 of 2006, Republic -vs- Samuel Ngetich for the purposes of correcting the record. The record of the said subordinate court is hereby rectified and the order erroneously recorded indicating that the respondent had been sentenced to pay a fine of Kshs.1800/- or in default to serve one month imprisonment is hereby expunged from the record. The erroneous committal warrant is also expunged.

The record shall reflect that the respondent was sentenced to serve three months probation. The Deputy Registrar of this court is hereby directed to return the original criminal court file to the Sotik Resident Magistrate's Court.

It is so ordered.

DATED at NAKURU this 18<sup>th</sup> day of SEPTMBER 2008

**L. KIMARU**

**JUDGE**