



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**  
**REVISION CAUSE NO. 4 OF 2004**

**REPUBLIC .....PROSECUTOR**  
**VERSUS**  
**SAMUEL MBUTHIA NYUTU.....ACCUSED**

**ORDER OF REVISION**

By a letter dated the 19th of December 2003 the Complainant in Nyahururu PMCCRC No. 2073 of 2003 Republic –versus- Samuel Mbuthia Nyutu has sought to invoke the revisionary jurisdiction of this Court to revise the order of the Resident Magistrate Nyahururu acquitting the Appellant for lack of evidence on the charge of assault causing actual harm contrary to **Section 251** of the Penal Code. I have perused the proceedings and the judgment of Lower Court and find that the Complaint raised by the Complainant is not without merit. However the High Court cannot under the provisions of **Section 362 and 364** Criminal Procedure Code convert a finding of acquittal into the one of conviction. (**See Section 364 (4)** of the Criminal Procedure Code). The Complainant is therefore advised to seek assistance from the Attorney-General through the State Counsel, Nakuru who would be in a position to file an application for extension of time to file an appeal against the said acquittal.

In the circumstances therefore I have no option but to **dismiss** this application seeking to invoke the revisionary jurisdiction of this Court.

**DATED at NAKURU this 27th day of April 2004.**

**L. KIMARU**  
**AG. JUDGE**