

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL REVISION NO. 14 OF 2002

ALBANUS ONGOTO MWENCHA.....ACCUSED

VERSUS

REPUBLIC.....PROSECUTOR

RULING ON REVISION

The subject in this revision was tried for and convicted for the offence of creating disturbance contrary to Section 95 (1) (b) of the Penal Code. He was sentenced to pay a fine of Ksh. 20,000/= and in default to serve 12 months imprisonment. This matter was then placed before this court pursuant to Sections 362 and 365 of the criminal procedure code.

The reference points out that the sentence was excessive and unlawful thus this court was urged to exercise its discretion to correct the error manifested in the Judgment.

I have perused the record of the trial court. I have also examined the provisions of Section 95 (1) (b) of the Penal Code. The law under the above mentioned section sets the maximum sentence to be imposed to be 6 months imprisonment. It is clear that the trial magistrate erred in meting out a sentence of 12 months imprisonment which is not provided by law. The record reveals that the subject was a first offender. The fine imposed of Ksh.20,000/= appears to be excessive.

The record shows that the prosecution's case was conducted by corporal Nyongesa. The law under Section 85 (2) of the criminal procedure code does not authorize police officers below the rank of an inspector to prosecute criminal cases. The court of appeal in the case of ROY RICHARD ELIREMA & ANOTHER VS REPUBLIC CR. APPEAL NO. 67 OF 2002 ruled that such a trial is a nullity.

Consequently I am not satisfied that there was a competent trial before the Senior Resident magistrate's court. The conviction is therefore quashed and sentence set aside.

DATED AND DELIVERED THIS 20th DAY OF September 2004

J.K. SERGON

JUDGE