

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL REVISION NO. 4 OF 2018

JAMES MUTHURI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. I have perused the proceedings of 30/1/2018 before D. Mochache PM in Shanzu PMCRC No. 59 of 2018.

2. The records reveal that, the charge, the subject matter of this request for revision was one of DISORDERLY CONDUCT CONTRARY TO SECTION 33(1) AS READ WITH SECTION 33(2). That provision of the law provides:-

“Any person found by a police officer to be drunk and incapable of drunk and disorderly in near a street, road licensed premises, shop hotel or other public place may be arrested without a warrant and brought without unreasonable delay before a Magistrate”.

Any person convicted of being drunk and incapable or drunk and disorderly in or near a place referred in subsection (1) shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both”.

3. The four accused person pleaded guilty to the charge and were recordingly convicted on own plea of guilty and were sentence as follows:-

“Fine of Kshs.10,000/= in default 30 days imprisonment”.

4. It is clear that the fine imposed is clearly illegal under the law. Being so illegal, the court is in law empowered to correct such by an order of revision under section 362 as read with 364.

5. I do invoke the courts powers, revise the sentence and quash it for being illegal. Noting that the sentence was meted out on 30th January 2018. I order that if any of the accused persons have paid the fine let the same be refunded and those in custody be released forthwith for I consider the period served to be adequate and commensurate with the offence charged.

6. I may only add that for such minor offences, largely based on inability to conducts one’s personal life decently and in a dignified manner, courts should really consider alternative sentences away from imprisonment terms which are in all event a financial burden to the public wherever one is to be kept in prison.

7. Let this ruling be certified and availed to the trial court for purposes of having original records rectified.This revision affects the entire sentence against the four (4) accused persons.

Dated and delivered at Mombasa this 2nd day of February 2018.

HON. P.J.O. OTIENO

JUDGE