



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CRIMINAL REVISION NO. 36 OF 2018**

**REPUBLIC..... APPLICANT**

**-VERSUS-**

**DAVID THIRIKWA NDUNGU.....RESPONDENT**

*(Being Revision of the Order of the Resident Magistrate dated 19<sup>th</sup> February, 2018 in the Chief Magistrate Court at Narok, in Criminal Case No. 214 of 2018, Republic V. David Thirikwa Ndungu).*

**ORDER ON REVISION**

1. This matter has been reported by the Chief Magistrate (Hon. W.A. Juma) for orders in respect of the order of the learned Resident Magistrate (Hon. A.N. Sisenda) in which she allowed a withdrawal of a charge of operating a bar business without a licence contrary to section 7(1)(a) as read with section 62 of the Alcoholic Drinks Control Act No. 4 of 2010. This was done after the the prosecution produced in court a licence from the respondent, which was valid. The order permitted a withdrawal under section 87(a) of the Criminal Procedure Code [Cap 80] Laws of Kenya.

2. In her report to this court the Chief Magistrate has indicated that the trial court lacked jurisdiction to entertain and determine this matter. In this regard, the definition of “magistrate” in the interpretation section of the Alcoholic Drinks Control Act in section 2 means “**A magistrate who is above the rank of the Resident Magistrate.**”

3. The chief magistrate has therefore urged this court to revise the order that allowed a withdrawal.

4. The issue raised in this matter is whether or not the order should be revised. The reason being that there was not in place an improper or illegal order that was adverse to the respondent or the state. Following the withdrawal of the charge, the issue became moot or academic. I refer to *Attorney General v. Ally Kleist Sykes (1957) EA 257*, in which the court therein declined to entertain academic questions submitted for its opinion in a case stated, since they were of academic nature. That court stated in clear terms that it was not part of its duty to answer academic questions.

5. Similarly the order of the trial court raises an academic question that does not call for revision by this court pursuant to its powers in terms of section 364 of the Criminal Procedure Code (Cap.75) Laws of Kenya, since a court does not issue orders in a vacuum.

6. I therefore decline to revise this order.

7. Orders accordingly.

**Order on revision dated this 13<sup>th</sup> day of December, 2018**

**J.M. BWONWONGA**

**JUDGE**

**13/12/2018**