

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL REVISION NO. 32 OF 2018

REPUBLIC..... APPLICANT

-VERSUS-

BRIAN KIPLANGAT & 5 OTHERS.....RESPONDENT

(Being Revision of the Order of the Resident Magistrate dated 13th March, 2018 in the Chief Magistrate Court at Narok, in Criminal Case No. 189 of 2018, Republic V. Brian Kiplangat & 5 Others).

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 the prosecution to withdraw a charge of being drunk and disorderly contrary to section 33(1) as read with section 33(2) of the Alcoholic Drinks Control Act No. 4 of 2010. The cash bail of the respondents was forfeited, after the respondents absconded. Following the withdrawal of the charge under section 87(a) of the Criminal Procedure Code (Cap.75) Laws of Kenya, the learned Resident Magistrate ordered the warrants of arrest to rein in force.

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. It therefore follows that Hon. Sisenda who holds the rank of Resident Magistrate did not have jurisdiction to entertain and determine this matter.

4. It also follows that the order made by the learned Resident Magistrate that the warrants of arrest will remain in force is null and void.

5. In the circumstances the said order is hereby set aside.

6. Orders accordingly.

Order on revision dated this 7th day of December, 2018

J.M. BWONWONGA

JUDGE

7/12/2018