

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL REVISION NO. 33 OF 2018

REPUBLIC.....APPLICANT

VERSUS

BRIAN IRUNGU & 4 OTHERS.....RESPONDENT

(Being Revision of the Order of the Resident Magistrate dated 12th February, 2018 in the Chief Magistrate Court at Narok, in Criminal Case No. 190 of 2018, Republic V. Brian Irungu & 4 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 convicted the respondent on his own plea of guilty for being drunk and disorderly contrary to Section 33 (i) (ii) of the Alcoholic Drinks Control Act No. 4 of 2010. She then proceeded to sentence the 4th and 5th respondents to a fine of shs.500/= in default to serve seven days imprisonment.

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 is null and void.

5. In the circumstances both the conviction and sentence are hereby quashed.

6. Since the learned Resident Magistrate did not have jurisdiction the order that warrants for the arrest of the 2nd accused , 3rd accused and 6th accused to remain in force is improper and the order is therefore set aside.

7. If the fine was paid, it should be refunded.

8. Orders accordingly.

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

J.M. BWONWONGA

JUDGE

7/12/2018