

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL REVISION NO. 47 OF 2018

REPUBLIC.....APPLICANT

-VERSUS-

VIVIAN ROTICH.....RESPONDENT

(Being Revision of the Order of the Resident Magistrate dated 22nd February, 2018

in the Chief Magistrate Court at Narok, in Criminal Case No. 239 of 2018,

Republic V. Vivian Rotich).

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 respondent to a fine of Shs.20,000/= in default to serve 3 months imprisonment in count one and Shs.15,000/= in default to serve 2 months imprisonment in count two.

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

7. Orders accordingly.

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

J.M. BWONWONGA

JUDGE

7/12/2018