



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CRIMINAL REVISION NO. 113 OF 2016**

**BETWEEN**

**CLEMENT MBOYA MBOYA.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(From original conviction and sentence in SRM's Court Oyugis Cr. C. No.252 of 2016)*

**RULING**

1. CLEMENT MBOYA MBOYA was convicted on a charge of creating a disturbance in a manner likely to cause a breach of the peace contrary to **Section 95 (1) (b)** of the **Penal Code** and sentenced to serve 1 year imprisonment by S.M. Mokuu (Chief Magistrate Oyugis Law Courts).

2. Subsequently he forwarded this file for revision vide a letter dated 28<sup>th</sup> November 2016 with the remarks:-

**“It has come to my knowledge that the sentence imposed herein is unlawful.”**

**Section 95 (1) (b) of the Penal Code provides:-**

**“Any person who brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace, is guilty of a misdemeanour and is liable to imprisonment for six months.”**

3. I need not say more – the sentence meted by the trial court was in excess of the legally provided sentence, therefore unlawful.

4. The same be and is hereby set aside. I revise and substitute it with the lawfully provided sentence of 6 months imprisonment.

5. The applicable 14 days right of appeal now runs from the date of this revision. This order be served on the officer in charge at the prison where the inmate is currently held.

**Dated this 1<sup>st</sup> day of December, 2016 at Homa Bay**

**H.A. OMONDI**

**JUDGE**