



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 6 OF 2014**

**K M .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING ON REVISION**

1. This file has been placed before me for purposes of revision. **K M** was charged with the offence of making false allegations contrary to **Section 38** as read with Section **(1) (a) (c) (3)** of the **Sexual Offences Act No. 3 of 2006**. Particulars of the charge being that on the **29<sup>th</sup> day of November, 2013** at **Emali Police Station** in **Nzauni District** within **Makueni County** made false allegations against **B M M** to the effect that **B M M** had committed rape against her a fact she knew to be false.
2. She was arraigned in court on the **1<sup>st</sup> December, 2013**. The charge was read to her and she admitted it. She was found guilty, convicted and sentenced to **ten (10) years** imprisonment.
3. This court has been moved pursuant to the provisions of **Section 362** of the **Criminal Procedure Code**. My duty is therefore to satisfy myself of the correctness, legality or propriety of the regularity of the proceedings of the Lower Court which resulted into the conviction made and sentence meted out.
4. **Section 38** of the **Sexual offences Act, 2006** was repealed by statute (*Miscellaneous Law Amendment Act, 2012*). As a result it is non-existent. A Magistrate accepting a charge that does not exist in law is erroneous. A conviction emanating therefrom cannot stand.
5. Following the irregularity aforestated stated, I do quash the conviction and set aside the sentence meted out. The applicant shall be released forthwith unless otherwise lawfully held.
6. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 9<sup>TH</sup> day of SEPTEMBER 2014.**

**L.N. MUTENDE**

**JUDGE**