Case Number:	Criminal Appeal 1152 of 1988
Date Delivered:	02 Oct 1989
Case Class:	Criminal
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	David Christopher Porter
Citation:	Ali v Republic [1989] eKLR
Advocates:	-
Case Summary:	**Ali *v* Republic** **High Court, at Nairobi** **October 2, 1989** **Porter J** **Criminal Appeal No 1152 of 1988** *(Appeal from original conviction and sentence in Criminal Case No 2107 of 1987 of the Second Class District Magistrate's Court at Makadara)* ***Criminal Practice and Procedure*** *– accused charged with subjecting a tenant to annoyance but section quoted incorrect – whether conviction can be sustained – section 30 Rent Restriction Act (Cap 296).* **Held**: Section 30 under which the appellant is charged does not create an offence. The result therefore is that the error in the charge is uncurable.

	Appeal allowed. **Cases** 1. *Uganda v Opidi* [1965] EA 614 2. *Sabur v R* [1958] EA 126 **Statutes** Rent Restriction Act (cap 296) sections 29, 30
Court Division:	Criminal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	Criminal Case No 2107 of 1987
Case Outcome:	Appeal allowed.
History County:	Nairobi
Representation By Advocates:	Neither party represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO 1152 OF 1988

BETWEEN

ALI..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

(Appeal from original conviction and sentence in Criminal Case No 2107 of 1987 of the Second Class District

Magistrate's Court at Makadara)

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October 2, 1989, **Porter J** delivered the following Judgment.

The Appellant was convicted in the court below of Subjecting a tenant to annoyance C/S 30 of the Rent Restriction Act Cap 296 as amended.

The sole point argued on the appeal is that S 30 does not create any offence. Going a little further than that argument, I have perused the record and I agree on my own assessment of it that the Learned Trial Magistrate's findings of fact are correct and that this is indeed the sole point on the appeal.

S 30, under which the Appellant is charged relates to the jurisdiction of the Tribunal and does not create an offence. Probably the intention was to charge under S 29. As it is the Appellant was charged with a non**280** existent offence.

I am able to trace only one authority directly on this point and that is the case of *Opidi-v-Rep* [1965] EA 614. I am referred also to *Sabur-v-R* [1958] EA 126 which was considered in *Opidi's* case and a distinction drawn as in *Sabur's* case the section wrongly quoted was at least an offence.

It is the *Opidi* argument which applies to this case. Whilst *Opidi* comes from a neighbouring jurisdiction, the argument in it is very powerful, and I find difficulty in departing from it. The result therefore is that the error in the charge in this case is incurable.

Appeal allowed conviction quashed and sentence set aside.

Dated and Delivered at Nairobi this 2nd October , 1989.

C. PORTER

JUDGE.