



REPUBLIC OF KENYA



**Mwende v Republic (Criminal Revision E506 of 2022)
[2023] KEHC 1871 (KLR) (Crim) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E506 OF 2022**

**DR KAVEDZA, J
FEBRUARY 27, 2023**

BETWEEN

EMMA MWENDE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged, convicted and sentenced to 4 months imprisonment for the offence of being in possession of alcoholic drinks that does not conform to the prescribed standard contrary to section 27(1)(b) as read with section 27(4) of the *Alcoholic Drinks Control Act* No 4 of 2010.

Analysis of law.

2. Upon receipt of the request for revision of sentence, this court directed that a Sentence Review Report be filed on the convict for consideration by the Court.
3. The Probation Officer Ms Faith Masila filed a report on the convict for consideration by the Court. The report shows that the Applicant is 37 years. She is currently serving her sentence in Lang'ata Women's Prison.
4. The powers of the High court in revision are contained in section 362 through to 366 of the *Criminal Procedure Code* (cap 75). Section 362 specifically provides as follows: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”



5. The issue herein is whether the circumstances of the matter does justify a revision by a superior court from subordinate court. On this issue I draw guidance as elucidated in the case in the case of *Republic v James Kiarie Mutungei* [2017] eKLR, Nyakundi, J held thus:

“The rationale of the High Court as a revisionary authority can be initiated by an aggrieved party, or suo moto made by the court itself, call for the record relating to the order passed or proceedings in order to satisfy itself as to the legality, or propriety, correctness of the order in question. The scope of revision therefore is more restrictive in comparison with the appellate jurisdiction which requires the high court to rehear the case and evaluate the evidence in totality by the lower court to come with a decision on the merits...”

6. The matter of sentence is governed by section 27(4) of the *Alcoholic Drinks Control Act* which provides that a person who contravenes the said section shall be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding five (5) years, or to both. The sentence of six (6) months was within the law. As such, it has not been demonstrated that the trial magistrate committed any illegality, impropriety or mistake in sentencing the applicant.

7. I am nonetheless alive to the *Sentencing Policy Guidelines* page 21 which provides: -

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high rates of recidivism associated with imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objective of sentencing is rarely met when offenders serve short sentences in custody. Further, short sentences are disruptive and contribute to re-offending.”

8. I have considered the probation report and noted that the offender is satisfied with her current sentence and wishes to complete it. She also had one month remaining to complete her sentence, by the time the report was filed.
9. In the circumstances, I hereby dismiss the application for revision and sustain the 4 months sentence as imposed by the trial court.
10. It is so ordered.

RULING READ, DELIVERED AND SIGNED THIS 27TH DAY OF FEBRUARY 2023

D. KAVEDZA

JUDGE

In the presence of:

