



REPUBLIC OF KENYA



Principal Magistrate Wajir Magistrates Court v Republic & another (Criminal Revision E151 of 2023) [2023] KEHC 18744 (KLR) (31 May 2023) (Ruling)

Neutral citation: [2023] KEHC 18744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E151 OF 2023**

JN ONYIEGO, J

MAY 31, 2023

BETWEEN

PRINCIPAL MAGISTRATE WAJIR MAGISTRATES COURT APPLICANT

AND

REPUBLIC 1ST RESPONDENT

LILIAN MAKENA KADOGO 2ND RESPONDENT

RULING

1. The second respondent together with nine others were on May 25, 2025 arraigned before the principal magistrates' court Wajir charged with the offence of disorderly conduct contrary to Section 33(1) of the *Alcoholic Drinks And Substances Control Act* No 4 of 2010. Particulars were that on the May 24, 2023 at township Location in Wajir East sub-county within Wajir County they were all found to be disorderly persons who were shouting and staggering in public due to drunkenness.
2. Upon returning a plea of guilty, they were each sentenced to a fine of Kshs 5000 in default serve one month imprisonment. However, the trial magistrate having realized that the sentence meted out was illegal as it exceeded the legally provided for sentence, wrote a letter dated May 31, 2023 addressed to the deputy registrar seeking placement of the file before the honourable judge for revision and correction of the sentence.
3. I have considered the application herein initiated by the trial court's own motion and the reasons stated thereof. This court's authority has been summoned pursuant to Article 165 (6) and (7) of the *Constitution* and Sections 362 and 364 of the CPL Article 165 (6) & (7) does provide;
 - (6) "The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.



- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice'.
4. To operationalize the above provision, Section 362 went further to provide that;

' Power of High Court to call for records.

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. Section 364 also does state as follows;

' Powers of High Court on revision.

1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - b. In the case of any other order other than an order of acquittal, alter or reverse the order.
 - c. In proceedings under section 203 or 296(2) of the *Panel Code*, the *Prevention of Terrorism Act*, the *Narcotic Drugs and Psychotropic Substances (Control) Act*, the *Prevention of Organized Crimes Act*, the *Proceeds of Crime and Anti-Money Laundering Act*, the *Sexual Offences Act* and the *Counter-Trafficking in Persons Act*, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.
2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
3. Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.



4. Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
5. When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.
6. From the above quoted provisions, it is apparent that the high court has wide supervisory powers over a subordinate court which can be exercised on the court's own motion or by application by any affected or interested party for the ends of justice to be met. In this case, the trial court did exercise her mandate properly so to correct an illegality committed during sentencing pursuant to Section 364(1) of the CPC.
7. Indeed, Section 33 (1) of the Alcoholic drinks and substances control Act of 2010 does provide as follows;

' Disorderly conduct

1. Any person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licensed premises, shop, hotel or other public place may be arrested without warrant and brought without unreasonable delay before a Magistrate.
2. Any person convicted of being drunk and incapable or drunk and disorderly in or near a place referred to in subsection (1) shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both'.
8. Having considered the penalty of Ksh 5000 imposed instead of Kshs 500, it is apparent that the sentence is illegal hence needs correction. Further considering that the 2nd respondent has been in custody from May 25, 2023 up to now, I am inclined to substitute the sentence with the period already served. Accordingly, the 2nd respondent (accused herein) is hereby set free forthwith unless otherwise lawfully held.

ROA within 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF MAY 2023.

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J.N.ONYIEGO

JUDGE

