



REPUBLIC OF KENYA



KENYA LAW
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**Ochieng v Republic (Criminal Revision E068 of 2023)
[2023] KEHC 26698 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL REVISION E068 OF 2023
WM MUSYOKA, J
DECEMBER 20, 2023**

BETWEEN

LIVINGSTONE OCHIENG APPLICANT

AND

REPUBLIC RESPONDENT

(Revision arising from a sentence order, in Busia CMCCRC No. E1728 of 2023, by Hon. EC Serem, Resident Magistrate, RM, of 21st November 2023)

RULING

1. The revision cause herein was initiated by way of a Motion, dated 14th December 2023. It seeks revision of a sentence that was imposed on 21st November 2023, on grounds that the same is harsh, excessive and extra punitive.
2. I have perused the trial court record. The applicant herein, Livingstone Ochieng, was arraigned before Hon Serem, RM, on 21st November 2023, facing a charge of being in possession of prohibited goods, to wit 8 bottles of pineapple gin, 5 bottles of Kongo waragi and 5 bottles of Officer cane spirit, contrary to section 200(d)(j), as read with sections 210(a) and 213 of the *East African Community Customs Management Act*, 2004. He pleaded guilty to the charge. The facts were read out to him, and he confirmed that they were correct. He was convicted. He mitigated, after which the sentence of 1 year in prison, without option of a fine was imposed.
3. The applicant is not challenging the propriety, legality, regularity or correctness of the proceedings, but rather the sentence, on grounds that the same was harsh, excessive and punitive. He says that his mitigation was not considered. He says that he is likely to lose his job, and that a fine would have sufficed.



4. In its sentencing order or ruling, the trial court recorded as follows:

“Mitigation considered. It is noted that the AP was selling the prohibited alcohol to school going children. This fact he accepted. He is sentenced to 1 year imprisonment. 14 days right of appeal.”

5. The trial court recorded that it had considered his mitigation, and so the applicant cannot say that the same was not taken into account. The key consideration by the court was that the prohibited goods were alcohol based, and as if that was not enough, the applicant was selling them to school going children. A right thinking reasonable adult would not sell alcohol to children, more so school going. Children should be secured or kept away from alcohol and other intoxicants, until they attain age of majority, when they can then make choices on whether to imbibe such drinks or not.
6. Sentencing is at the discretion of the trial court. The court herein exercised its discretion judiciously, after taking into account that the applicant was messing up with school going children, by selling alcohol to them. It was not just about possessing prohibited goods, but also who he was disposing of the prohibited goods to. It called for a deterrent sentence, to keep the applicant way away from schoolchildren, lest he corrupted their morals and led them astray.
7. Revision is about an order being illegal, or incorrect, or irregular, or improper. I see nothing improper in the sentence imposed. There is no merit in the revision application, dated 14th December 2023, and I hereby dismiss it.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 20TH DAY OF DECEMBER 2023.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Livingstone Ochieng, the applicant, in person

