



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CRIMINAL REVISION NO. E001 OF 2022

VINCENT OMBUI MORWABE.....APPLICANT

=VRS=

THE REPUBLIC.....RESPONDENT

{Being a Revision against the Order of the lower court in the Original Nyamira Chief Magistrate's Court Criminal Case No. 1401 of 2021}

RULING

1. The application before me is for Revision of the sentence which the trial court handed down against the applicant herein.
2. The applicant, **VINCENT OMBUI MORWABE** was convicted for the offence of **Manufacturing Alcoholic Drinks without a licence contrary to Section 7 (1) as read with Section 27 (1) as read with Section 27 (1) (A) of the Alcoholic Drinks Control Act No. 4 of 2010.**
3. Following the conviction, the applicant was sentenced to a fine of Kshs. 1,500,000/- or, in default three (3) years imprisonment.
4. The applicant was also convicted for the offence of **Dealing with Alcoholic Drinks without a licence contrary to Section 7 (1) (b) as read with Section 34 (a) of the Alcoholic Drinks Control Act, No. 4 of 2010.**
5. For this offence, the applicant was sentenced to a fine of Kshs. 500,000/- or in default six (6) months imprisonment.
6. The applicant has asked this court to review the sentences because he deems the same to be manifestly excessive, considering the circumstances of the case.
7. When canvassing the application, Mr. Mayaka, the Learned Advocate for the applicant submitted that the charge sheet shows the equipment which the applicant had, together with 100 litres of chang'aa.
8. Whilst conceding that the prosecution told the trial court about some 5,000 litres of chang'aa, the applicant pointed out that that quantity of chang'aa was never exhibited before the court. Mr. Mayaka Advocate described as hearsay, the information concerning the alleged 5,000 litres of chang'aa.
9. In the circumstances, the applicant asked this court to hold that the period which the applicant had already served was sufficient punishment.
10. In answer to the application, Mr. Majale, Learned Prosecuting Counsel, submitted that the sentence was proper, as it was in accordance with the law. He therefore asked the court to dismiss the application.
11. The court did inquire from Counsel whether or not his client could have lodged an appeal, if he believed that the trial court had erred. Mr. Mayaka Advocate indicated that whilst the applicant could have filed an appeal, he made a choice to seek revision.
12. Ordinarily, the court would be called upon to review a decision which was a glaring mistake, such as when the trial court had imposed a sentence which was not prescribed.
13. In this instance, the sentence handed down by the trial court was within the scope of the prescribed sentence. It therefore follows that the trial court had not made any glaring error when it handed down the said sentence.
14. Secondly, I note that when the charges were read out to the applicant, he admitted the same.

15. More significantly, the applicant admitted the correctness of the facts which were presented by the prosecution. The facts which the applicant admitted were as follows: -

“On 17/12/2021 at 0400hrs, officers from Nyamira Police Station were on routine patrol while acting on a tip-off, proceeded to the homestead of the accused and conducted a search where they recovered 5,000L of kangara, 2 copper siphoning equipment, 2 metal drums, 60L of chang’aa and 100L of kangara all used in the manufacture of chang’aa, without a licence. The 5000L of kangara was destroyed at the scene whereas the 60L chang’aa and 100L kangara were retained as exhibits as well as the 2 copper siphoning equipment and 2 metal drums. Accused was then arrested and charged herein.”

16. I hold that the facts which were expressly admitted by the applicant cannot be deemed as hearsay. Therefore, the trial court cannot be faulted for taking into account the said facts when sentencing the applicant.

17. Indeed, if the Learned trial Magistrate would have ignored the facts, which the applicant had admitted, that would have been tantamount to a failure to take into account a relevant factor.

18. Accordingly, I find no merit in the application for Revision: it is therefore dismissed.

DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF FEBRUARY 2022.

FRED A. OCHIENG

JUDGE