



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL DIVISION

CRIMINAL REVISION NO. E008 OF 2021

(Criminal Case No. E974 of 2021 of the Chief Magistrate's Court at Nyeri)

KLINSMAN WACHIRA NDIRANGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. This is an application made by **Klinsman Wachira Ndirangu** who seeks a revision of his sentence under the provisions of Section 362 of the Criminal Procedure Code;
2. A brief outline of the case was that the applicant was charged and convicted on his own plea of Guilty on two (2) counts; On Count I the applicant was charged with the offence of Contravening Provisions of Prevention, Control or Suppression of Covid-19 c/s to Rule 6(2)(b) as read with Rule 11 of the Public Health (Covid 19 Restriction of Movement of Persons and Related Measures) Rules 2020 of the Public Health Act.
3. The particulars of the offence being on the 14/04/2021 at about 1645hrs at Midland Bar in Nyeri Township within Nyeri County the applicant was found selling alcoholic drinks and failed to put in place measures to ensure that physical distance of not less than one meter was maintained between persons consuming alcoholic drinks in contravention of the aforementioned Act;
4. On Count III the applicant was charged with the offence of Contravening Provisions of Prevention, Control or Suppression of Covid-19 c/s to Rule 6(1)(b) as read with Rule 11 of the Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules 2020 of the Public Health Act;
5. The particulars of the offence being that on 14/04/2021 at about 1645hrs at Midland Bar in Nyeri Township within Nyeri County, jointly with others before the court were found gathered at the said bar which was a public place while not wearing a mask to cover his nose and mouth in contravention of the above Act;
6. On his own Plea of Guilty the applicant was on 15/04/2021 convicted and sentenced to three (3) months imprisonment with no option of a fine on Count I and on Count III to a fine of Kshs.2000/- or in default to seven (7) months imprisonment; being aggrieved by the sentence the applicant filed the instant application for revision of sentence vide his letter filed in court on 19/04/2021 in which the applicant submitted that the sentence imposed by the trial court was manifestly excessive for a first offender and urged this court to revise the sentence by invoking the provisions of Section 362 of the Criminal Procedure Code; and to
7. The applicable penalty for a person who commits an offence under the Rules shall upon conviction, be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months or both;
8. After reading the applicants letter the only issue for determination is whether the application for revision of the sentence is merited; the applicable law is found at Section 364 which provides that this court may alter or reverse the order on sentence imposed by the trial court;
9. It is this courts considered view that on Count I the trial court ought to have taken into consideration the fact that the applicant was a first offender and ought to have given him the option of a fine;
10. In the light of the material placed before this court and the circumstances of the case this court is satisfied that this is a suitable case for it to exercise its supervisory powers of revision conferred under the provisions of Section 364 of the Criminal Procedure Code.

11. The order dated 15/04/21 made by the Hon. M.N. Lubia (RM) sentencing the applicant to a term of three (3) months imprisonment without an option of a fine is hereby revised and set aside; and is substituted with a sentence of Kshs.20,000/- or in default to a sentence of three(3) months imprisonment; the sentence imposed on Count III is found to be lawful and does not warrant interference.

Orders accordingly.

Dated, Signed and Delivered at Nyeri this 21th day of April, 2021.

HON. A. MSHILA

JUDGE