

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL REVISION NO. E053 OF 2021

CORAM: R.E. ABURILI, J

JOSEPH OGUTU ODIPO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Revision of sentence in Ukwala SRM Court's Criminal Case No. 355 of 2019 on 03.03.2021 by Hon. C. I. Agutu, Senior Resident Magistrate)

RULING ON REVISION

1. The convict Joseph Ogutu was convicted of the offence of manufacturing alcoholic drink contrary to Section 32(1) as read with Section 8 of the Alcoholic Drinks Control Act No. 4 of 2010. He was sentenced to a fine of Kshs. 150,000 in default to serve one (1) years imprisonment.
2. There is no indication on record whether he was a first or repeat offender. He pleaded not guilty to the charge and a full hearing was conducted.
3. According to the charge, the accused was on 27/8/2019 at Sega sub location in Ugenya Sub County within Siaya County found in possession of alcoholic drink to wit 300 litres of Kangara which is used in the Manufacturing of Changaa.
4. He was sentenced on 3/3/2019 to serve one year in prison. If that be the case, one year imprisonment is fully served as a calendar year would lapse on 3/3/2020. This is 24/6/2021 which is more than two years since the convict was sentenced. The probation officer's report therefore captures erroneous dates.
5. Be as it may, the committal warrant and judgment is clear that sentence was imposed on 3/3/2021 hence the convict has now served three and a half months in prison as he has not raised the fine imposed of Kshs. 150,000. The probation officer recommends that the convict be placed on CSO at Sega Health Centre.
6. The convict is said to be willing to serve non-custodial sentence on Community Service Order, which will enable him look for bursary for his daughter who did KCPE this year and is expected to join Form One. He has six children and is married to 2 wives and is aged 43 years.
7. He has not appealed. He is willing to change and a report from Prisons indicate that he is well behaved with no disciplinary issues.
8. The sentence imposed is lawful. The proceedings were regularly conducted hence there is no impropriety on the record.
9. However, as the sentence imposed is short term of one year and the convict has already served three and a half months, I invoke the provisions of Section 3 of the Community Service Orders Act No. 18 of 2018 and in the spirit of prison decongestion, set aside the sentence imposed by the trial court and substitute the remainder of the prison term with an order that the convict Joseph Ogutu shall serve supervised and unpaid community service at Sega Health Centre under close supervision by the Probation Officer and the Incharge of the Health Centre for a period of eight and a half months from the date of signing of the community Service Order.
10. File closed.
11. Orders accordingly.

Dated, signed and Delivered at Siaya this 24th Day of June, 2021

R.E. ABURILI

JUDGE