



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. E235 OF 2021

EUNICE GAKIIAPPLLCANT

VERSUS

REPUBLIC.....RESPONDENT

[Revision from the original conviction and sentence of the Chief Magistrate’s Court at Nkubu in Cr. Case 213 of 2021 delivered on 6th October 2021 by Hon T. Gesora, CM]

RULING

[1] The court has considered the revision sought by a letter dated 7/10/2021 by the applicant under section 364(1) (b) of the Criminal Procedure Code from the decision of the Maua CM’s Court Criminal case No. 213 of 2021 in which the trial court sentenced the applicant to imprisonment for 18 months for the offence of dealing with alcoholic drinks without a licence contrary to section 7(1) as read with 62 of Alcoholic Drinks Control Act 2010, upon a plea of guilty.

[2] The applicant complained that the trial court did not consider an option of a fine, and that the sentence was harsh; that the applicant was a first offender; and that she was a single mother of 4 children aged between 12 and 3 years who depend on her.

[3] In her own mitigation the applicant told the trial court that *“I sell Changáa because I have school going children and couldn’t find another job.”*

[4] The trial court also considered a Probation Officer’s pre-sentence report dated 6/10/2021 which recommended as follows:

“Your Honour, despite the current economic hard times, the accused could have sought alternative occupation instead of selling alcoholic drinks, especially to school going students. In the effort of helping the local administration fight this vice, I recommend the court not to grant the accused non-custodial sentence which offenders of illicit drinks have gotten used to, but to deal with the matter otherwise.

J. M. Kagucia

Probation Officer

Maua.”

[5] The good motive of providing for her school children cannot justify the commission of the offence of dealing with alcoholic drinks without a licence. The applicant was not remorseful in any way, and did not seek to change her ways. I consider that a custodial sentence was appropriate and the trial court was right in imposing a sentence of imprisonment without a fine as it is entitled in discretion under section 26 of the Penal Code and section 62 of the Alcoholic Drinks Act.

[6] I have not found any ground for interference with the sentencing discretion of the trial court as the sentence was neither excessive nor harsh in the circumstances of the case or based on any wrong principle. See *Wanjema v. R* (1971) EA 493.

ORDERS

[7] Accordingly, the application for revision by the applicant’s Counsel’s letter dated 17/10/2021 is declined.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF OCTOBER 2021.

EDWARD M. MURIITHI

JUDGE

APPEARANCES: MR. OMARI ADVOCATE FOR THE APPELLANT.

MS. NANDWA, PROSECUTION COUNSEL FOR THE RESPONDENT.