



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL REVISION NO. 5 OF 2020**

**(CORAM: R. E. ABURILI - J.)**

**BEATRICE ACHIENG MBAI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Application for revision of sentence vide Senior Resident Magistrate's Court, Ukwala vide Criminal Case No. 552 of 2019 dated 22.10.2019 before Hon. C.N. Sindani, Senior Resident Magistrate)*

**RULING**

1. The convict **BEATRICE ACHIENG MBAI** was convicted and sentenced to serve one year in prison for the offence of manufacturing of alcoholic drinks contrary to **Section 32(1)(b) of the Alcoholic Drinks Control Act No 4 of 2016**. She pleaded guilty to the charge. She also faced the second count of being in possession of the said liquor for sale being one litre of changaa without a licence.
  2. In the first count, she was found to have manufactured 250 litres of Kangara which is used to manufacture changaa.
  3. She readily admitted both counts and she was convicted and sentenced to pay a fine of Kshs. 100,000/= in count one and in default to serve one year imprisonment whereas in Court 2 she was fined Kshs. 3,000/= in default to serve one month imprisonment. The two sentences to run concurrently.
- She has not appealed.
4. In her mitigation, she said she was a widow with 8 children.
  5. No probation report was availed or called for to appreciate her social antecedents before sentencing.
  6. However, this court did call for a probation report which was filed on 9/3/2020 and which shows that the convict has 6 children but she is not a widow. She therefore lied to the trial court when she stated in her mitigations that her husband died.
  7. Nonetheless her incarceration has negatively affected her school going children. Some are in secondary school and the proceeds of sale of changaa is used to pay their fees and feed them. She is remorseful and promises not to reoffend.
  8. Her husband is now said to be immobilized following an injury sustained in an accident. She is said to be suitable for community service at Ugenya Chief's Camp.
  9. Having considered all the above, I am persuaded that the convict who has served part of her prison term deserves a chance to change.
  10. For the sake of her suffering family, I revise her sentence. I set aside prison term of 1 year and 1 month following her inability to pay the fines imposed and order that the convict **Beatrice Achieng Mbai** shall be released from prison to perform unpaid Community Service at South Ugenya Chief's Office under close supervision by Mr. Christopher Muliro.
  11. Orders accordingly.

**Dated, signed and delivered at Siaya, this 19<sup>th</sup> Day of March 2020.**

**R.E. ABURILI**

**JUDGE**