



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL REVISION NOS. 75,75A AND 75B OF 2020

REPUBLIC.....PROSECUTOR /APPLICANT

VERSUS

JOYCE TAKISANUI.....1ST ACCUSED/RESPONDENT

ENOCK LANGAT.....2ND ACCUSED/RESPONDENT

BERNARD LANANGAT.....3RD ACCUSED/RESPONDENT

(Being revision arising from the judgement of Hon W. Juma, Chief Magistrate, delivered on 12/05/2020 in Criminal Case No. 168 of 2020 in the Chief Magistrate Court at Narok, R v 1. Joyce Takanui 2. Enock Langat 3. Bernard Langat)

ORDER IN REVISION.

1. I have consolidated the three applications for revision.
2. The Hon. Chief Magistrate has reported the above matter for revision by this court, following the conviction and sentence of a fine of Kshs 15,000/= in default to serve three months' imprisonment in respect of each respondent in count 2. Count 2 charged the respondents with failing to maintain social distance contrary to Rule 6 (1) (a) as read with Rule 6 (3) and Rule 11 of the Public Health (Covid 19, Restriction of Movement of Persons and Related Measures Rules 2020.
3. In count 3 the first respondent was sentenced to a fine of Shs. 40,000/= in default to serve five months' imprisonment. Count 3 charged the first respondent with being in possession of 40 litres of chang'aa contrary to section 27 (1) (b) as read with section 27 (4) of the Alcoholic Drinks Act.
4. In his outline of facts, the prosecutor told the court that on 10/5/2020 one Sgt Kyalo received information from members of the public that a motor cycle was carrying chang'aa in the Olpito area. He proceeded there with PC Tache and saw the motor cycle registration No. KMED 860F Bajaj.
5. They signaled it to stop. It was being driven by Bernard Langat. Joyce Takanui and Enock Langat were pillion passengers. The police officers noticed the two litres of liquid, which they suspected to be chang'aa. Joyce Takanui confirmed that the liquid to be chang'aa.
6. They were arrested and charged with the above offences. They all pleaded guilty and were convicted and sentenced accordingly.
7. The charge sheet shows that it was signed by the OCS Narok police station. It also shows that it was thereafter approved by the Office of the Director of Public Prosecutions, Narok county office.
8. In her mitigation, the first respondent told the court that she left a child alone at homewith no one to care for that child. She also told the court that she is an orphan and that she is the sole bread winner. She also told the court that she was not able to pay a heavy fine. Additionally, she told the court that she was not going to repeat the offence and asked for forgiveness.
9. In his mitigation, the second respondent requested the court to pardon him. Additionally, he told the court that he did not know that what was carried was chang'aa.
10. The third respondent requested for forgiveness. He also told the court that he was not going to repeat the offence.
11. The law required the Hon.Chief Magistrate to make clear the reasons for requesting the High Court to revise the orders made by the trial court. Those reasons would enable the High Court as the revising court to see the basis for the application for revision of the orders at a

glance. See **generally Uganda v Welli [1966] EA 324**. The learned Hon. Chief Magistrate failed to indicate the reasons why it was necessary to have the orders revised in terms of section 362 of the Criminal Procedure Code. This requirement is important in the interests of expeditious disposal of the matter reported for revision.

12. Furthermore, the law also required the trial court to inform the respondents the consequences of pleading guilty including the penalties to be imposed before recording the order of conviction. This also was not done.

13. In the light of the foregoing errors of law, I find that the order of conviction and sentence is contrary to the law and is hereby set aside with the result that the respondents are hereby ordered set free unless held on other lawful warrants.

14. If the monetary fines were paid they should be refunded.

Order signed, dated and delivered at **Narok** this **17th** day of **June, 2020** in the absence of both the applicant and the respondents.

J. M. BWONWONG'A.

J U D G E

17/06/2020.