



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO.15 OF 2017**

**DAVID MURITHI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original conviction and sentence in Criminal Case No. 458 of 2017 of the Senior Resident Magistrate's Court at Marimanti).**

**R U L I N G**

1. **DAVID MURITHI**, the applicant herein, was convicted of the offence of dealing in an alcoholic drink without a licence contrary to **Section 7(1)** as read with **Section 62** of the **Alcoholic Drink Control Act No.4 of 2010**.

The particulars of the offence were that on 20<sup>th</sup> October, 2017 at Gitunguri market in Tharaka South Sub-County within Tharaka Nithi County, the applicant was found dealing in alcoholic drink namely Mugacha 20 litres without a licence in contravention of the Alcoholic Drinks Control Act No.4 of 2010. The applicant pleaded guilty and upon conviction he was sentenced to serve 3 years imprisonment without an option of fine. The trial court in sentencing the applicant noted that the applicant was a repeat offender and that he kept on hiding/camouflaging his identity to perpetrate crimes. He has now vide Notice of Motion dated 24<sup>th</sup> November 2017 applied for review asking for leniency from this court.

2. This court did call for the lower court file for purposes of satisfying myself on the correctness, legality and propriety of the proceedings and sentence passed against the applicant by the trial court. After perusing through the proceedings and the charge that faced the applicant I am satisfied that the proceedings, conviction and sentence meted out was legal, proper and correct.

3. The basis of my findings is that the provisions of **Section 62** of the **Alcoholic Drinks Control Act No. 4 of 2010** provides for a maximum penalty of 3 years imprisonment or Kshs.500,000 or both for the sort of offence committed by the applicant. I have perused through the reasons given by the learned trial magistrate for meting out the punitive and deterrent sentence and I am satisfied that the reasons given are well grounded. Apart from the prevalence of the vice in the Area, the applicant was a repeat offender.

This court directed for a social inquiry to be conducted on the applicant and the findings contained in the report dated 23<sup>rd</sup> November, 2018 are in tandem with the findings of the trial court. The applicant is an habitual offender and has been using pseudo names with the view to evading justice for long. He certainly requires time in a reform facility to transform and reflect on his past activities which have found him in the wrong side of the law.

In the premises, this court finds no merit in the application dated 24<sup>th</sup> November, 2017. The same is disallowed for aforesaid reasons.

**Dated, signed and delivered at Chuka this 28<sup>th</sup> day of January, 2019.**

**R.K. LIMO**

**JUDGE**

**28/1/2019**

Ruling signed, dated and delivered in the open court in presence of the applicant in person and Momanyi for State.

**R.K. LIMO**

**JUDGE**

**28/1/2019**