

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 130 OF 2018

(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 12 OF 2018 OF THE PRINCIPAL MAGISTRATE'S COURT AT MARIMANTI)

CECILIA CIAKUTHI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The applicant in this matter was charged with the offence of dealing in alcoholic drink without a licence contrary to **Section 7(1)(b)** as read with **Section 62** of the **Alcoholic Drink Control Act No. 4 of 2010**.

2. The particulars of the charge were that on 8th January 2018 at Kamunyaki Location in Tharaka South she was found with 30 litres of "**Kathoroko**" (a local alcohol drink) without licence.

The applicant pleaded guilty to the charge and was convicted on her own plea and sentenced to a fine of Kshs.200,000/- or two years imprisonment in default.

3. The applicant through a Notice of Motion dated 10th July 2018 has moved this court for review of her sentence to a non custodial sentence. The grounds given are that she is a bread winner, and a single mother whose children are now out of school as a result of her imprisonment.

4. In the exercise of my revisionary powers under **Section 362** of the **Criminal Procedure Code** this court called for the lower court file to satisfy myself on the correctness, legality and propriety of the proceedings and sentence meted out against the applicant. I have gone through the proceedings in the lower court. I note that the sanction provided under **Section 62** of the **Alcoholic Drinks Act No 4 of 2010** is improvement of upto 3 years or a fine of upto Kshs.500,000/-. The sentence meted out by the trial court is within the confines of the law but given the amount of alcohol found with the applicant which is indicated as 30 litres, I am inclined to agree with the applicant that the sentence was a little bit harsh. I have also noted that the trial court may have taken into consideration some extreme factor which appears extraneous as expressed in the judgment which is:

"This court is 100% behind the National Government's effort to curb this crime and..... note that it is the cause of all evils defiance to law, surging crime rates, HIV scourage, general illiteracy and poverty." While this court do not doubt that the said illicit brew may have caused some maladies and other social disorder, certainly it cannot be said to be a cause "***of all evils***" unless one can come up with empirical study to back up such claims.

In the premises, and given the fact that the applicant has already served one year of the sentence meted out against her, this court opines that she has learnt her lessons. She expressed remorse and I have noted that she has learnt useful skills while in prison which will make her useful not only to her children when released but the society at large. I allow this application. The sentence of 2 years imprisonment meted out against is set aside for being too harsh. In its place I sentence her to the period she has already served (1 year). She is therefore released forthwith unless otherwise lawfully held. Upon release she is advised to engage in useful and constructive ways and avoid destructive ways like dealing in illicit brews

Dated, signed and delivered at Chuka this 25th day of February, 2019.

R.K. LIMO

JUDGE

25/2/2019

Ruling signed, dated and delivered in the open court in presence of Momanyi for Respondent and Applicant in person;

R. K. LIMO

JUDGE

25/2/2019