

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO. 107 OF 2019

HANIFFER WAFULA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the entire Judgment delivered by Hon. M. Munyekenye – Principal Magistrate, in the Senior Resident Magistrate’s Court on the 8th July, 2019 in Criminal Case No. 423 of 2019 at Webuye, R –vs- Haniffer Wafula)

JUDGMENT

The appellant was convicted and sentenced on her own plea of guilty and sentenced to 3 (three) years imprisonment. In respect of the offence of being in possession of 50 litres of chang’aa contrary to **section 27(1)(b)** as read with **section 27(4) of the Alcoholic Drinks Control Act of 2010**.

In this court the appellant’s counsel, Mr Namisi abandoned the appeal against conviction and proceeded to argue against sentence only.

In his mitigation in this court he submitted as follows. He submitted that the trial court did not taking into account that the appellant was a single parent and was the sole bread winner of her family of seven children with eldest being sixteen (16) years and the last born being one (1) year and eight (8) months. He further submitted that the imprisonment of the appellant will render her children destitute.

He further informed the court that the appellant was recently operated upon and the surgical wound has not yet healed, a matter in respect of which she still requires medical attention. He also informed the court that the appellant is a peasant farmer and may only raise Kshs. 10,000/= as a fine. He therefore urged the court to consider a non-custodial sentence, either a sentence of a fine or to be placed on a Community Service Order.

Ms Koech for the State conceded the appeal on sentence.

I have considered her mitigation that she is a mother of seven children and who is healing from a surgical wound, which wound requires medical treatment. I have also taken into account that she is a single parent and sole bread winner.

I find that the appellant was in possession of 50 (fifty) litres of chang’a without a licence. This was a huge quantity.

I find that the sentence imposed was manifestly excessive. It is hereby quashed.

In the circumstances, after taking all factors into account, I hereby sentence the appellant to a sentence of a fine of Kshs. 8,000/= in default to serve three (3) months imprisonment.

Judgment signed, dated and delivered at Bungoma this 9th day of August, 2019 in the presence of the appellant and Ms Nyakibia for the Respondent.

J. M. Bwonwong’a.

J U D G E

9th August, 2019.