

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 235 OF 2019

CAROLYNE NYAMBURA WAITHIAGENI.....RESPONDENT

VERSUS

REPUBLICRESPONDENT

RULING

1. I have considered the above submissions. The offence facing the appellant is of being in possession of changaa, to wit, 20 litres.
2. In imposing a custodial sentence, the court had regard to the submission that the applicant had two previous convictions namely in **Cr. Case No.3070/2019** and **395/2019**. In those offences, she was charged under a different name.
3. This court is unable to authenticate the submission of existence of previous conviction. The prosecution failed to do due diligence by confirming her identity thorough finger prints. In that regard, I am unable to hold that she had previous convictions, more so based on the fact that the charge sheets for the previous offences shown to this court bear a different name.
4. I now consider that the amount of changaa is not too large. The applicant can be given an opportunity to serve a non-custodial sentence. I order that a Community Service Orders report be filed. Mention on 4/12/2019 for Community Service Orders report.

DATED and DELIVERED this 26th day of **November, 2019**.

G.W. NGENYE-MACHARIA

JUDGE