



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 24 OF 2016

JOYCE MUTHONI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 783 of 2016 of the Senior Resident Magistrate's Court at Marimanti on 29/12/2016).

R U L I N G

1. The office of the Director of Public Prosecution on behalf of the Republic has applied for a revision under **Section 362** of the Criminal Procedure Code of the decision made by Hon. S.M Nyaga Resident Magistrate in Marimanti PM's Court Criminal Case No. 783 of 2016. In that case Joyce Muthoni was charged with being in possession of Alcoholic Drink contrary to **Section 27(1)(b)** as read with **Section 27(4)** of the Alcoholic Drink Control Act No.4 of 2010. A perusal of the charge sheet presented in the said court reveals the particulars charge being that on 28th December, 2016, at Marimanti Location Tharaka South within Tharaka Nithi County, the Accused was found being in possession of 80 litres of alcoholic drink namely "**Nguzo**" which was not in conformity with requirements under Alcoholic Drink Control Act No. 4 of 2010.

2. The court record from the court below reveals that when the accused was taken to court for plea, she admitted the charge and facts which were read over to her in Kiswahili language - a language she confirmed to that she was familiar with. Upon her own plea of guilty, the trial court however discharged under **Section 89(5)** of the Criminal Procedure Code holding that the evidence presented by the prosecution "**did not meet the threshold evidence required to prove this matter.**" The trial court further found that the state had not stated the requirement under the Alcoholic Act that the accused had failed to comply and that there was no evidence adduced to show that the exhibit produced (PEXh 1) was alcohol in order to prove the offence under which the accused was charged with.

3. The state vide a letter dated 29th December, 2016 faulted the decision made by the learned trial magistrate pointing out that the plea taken was unequivocal and that the accused pleaded guilty both to the charge and the particulars. In its view, with the plea of guilty entered, the burden of proof ceased to exist and that there was no dispute that the contents produced as P exhibit 1 was alcohol. It is submitted that the trial magistrate erred by discharging instead of convicting her on her own plea of guilty because an offence known in law had been committed. The state has relied on the decision in the case of **EDWARD OKOTH WERE & OTHERS -VS- R [2008] eKLR** to buttress this point. In the cited case the court held that the responsibility of pleading guilty or not guilty is that of the defendant himself and that where an accused unequivocally pleads guilty to the charge and facts- presented in court, conviction and sentence shall follow forthwith and there is no requirements to prove the facts by evidence. The state has therefore applied for revision of the decision of the learned trial magistrate at Marimanti on the basis,

of the legality of the said decision.

4. I have considered the application and I have also perused at the proceedings of the lower court and the entire original file which I called for on receipt of this application. I have looked at the charge sheet presented to the court and I am satisfied that contrary to the erroneous finding by the learned trial magistrate, the charge and the particulars therein does disclose an offence known in law which is described under **Section 27(1)(b)** as read with **Section 27(4)** of Alcoholic Drinks Control Act contained in the Legal Notice No. 4 of 2010. Part II of the said Act clearly details all the requirements that a person needs to manufacture or distribute alcoholic beverages in Kenya. It is important to note that the purpose for which parliament enacted and passed this legislation was to provide for the regulation of the production, sale and consumption of alcoholic drinks in this country and this indeed was for good measure in view of the dangers that the society faced in unregulated alcoholic environment. **Section 7** of the Act clearly provides for checks and control of all manner of alcoholic drinks including conventional manufactured alcoholic drinks and traditional alcoholic drinks and provides that for any person to deal with alcoholic beverages, he or she must obtain a licence issued in accordance with **Section 9** of the said Act. It is clear from the facts presented therefore that the accused at the trial failed to conform with the regulations stipulated by the law cited above and the trial magistrate misdirected himself, by holding that the charge sheet presented did not disclose an offence or that he had not been told clearly about the legal requirements that the accused persons failed to meet. The charge sheet as indicated above clearly disclosed an offence known in law (read Alcoholic Drinks Act No. 4 of 2010) and the fact that the accused pleaded guilty to the offence in an unequivocal manner really left the trial with no other alternative but to render a conviction and an appropriate sentence in accordance with the law.

5. I am in agreement with the sentiments expressed by the state including the decision in the cited case above that once an accused has pleaded guilty to a charge the burden of proof placed on the prosecution ceases. If the trial court had reasons to believe that the exhibit produced was suspicious, it would have demanded for more expert evidence rather than discharging the accused. I note from the proceedings that the trial court noted that the accused person was a person suffering from some disability and although the nature of disability is not explained, that issue should only be a consideration as a mitigating factor and hence relevant only in so far as meting out appropriate sentence is concerned. The physical ability or disability of an accused person is not a factor in whether or not to render a conviction. A determinant fact is the evidence and the law. In this instance the accused pleaded guilty to the charge and as I have observed above the court ought to have rendered a conviction because the charge presented was competent and not defective to warrant a discharge or rejection of the same.

In the premises, I find basis to exercise my revisionary powers under **Sections 362 and 364** of the Criminal Procedure Code and reverse the decision to discharge the accused made by the learned magistrate on 29/12/2016. For the interest of justice and in the spirit of the provisions of **Section 364(2)** of the Criminal Procedure Code, I shall direct that the accused person be taken before a different court with competent jurisdiction for purposes of re-taking the plea afresh and proceeding thereafter as provided by law.

Dated and Delivered at Chuka this 30th day of January, 2017.

R.K. LIMO

JUDGE

30/1/2017

Before Hon. R. K. Limo -J

Pros- Miss Njagi - State Counsel

C/A Murithi

Miss Njagi for the Applicant

Ruling dated, signed and delivered in the open court in the presence of Miss Njagi for the applicant and Joyce Muthoni the Respondent appearing in person.

R.K. LIMO

JUDGE

30/1/2017