



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL REVISION 81 OF 2017

REPUBLIC.....PROSECUTOR

Versus

GLADYS KARWIRWA.....APPLICANT

RULING

Revision

[1] The Applicant herein Gladys Karwirwa was charged with two counts in the Meru Chief Magistrate's Court namely;

- (1) Selling alcoholic drinks without license contrary to Section 7 (1)(b) of the Alcoholic Drinks Control Act of 2010 as read with Section 62 of the same Act; and
- (2) Processing alcoholic drinks without license contrary to Section 7 (1) (a) as read with Section 62 of the Alcoholic Drinks Control Act No. 4 of 2010.

[2] The Applicant was convicted on her own plea of guilty in respect of count 1 & 2 and fined Kshs 1,000 or in default to serve 14 days imprisonment, and Kshs 500,000 or in default to serve two years imprisonment respectively. Subsequently, the Applicant filed this Revision setting forth the following grounds:

1. **That the conviction is legally unsound as there was no Government Chemist report to confirm whether the alleged alcoholic drink are what they were claimed to be.**
2. **That the so called "muna "in count 2 is unknown in law.**
3. **That the prosecution failed to establish that the substance with which the accused was found with was an alcoholic drink as defined under Section 2 of the Alcoholic Drinks Act No. 4 of 2010.**
4. **That the sentence is manifestly excessive since the convict was a first offender with no previous records being availed by the prosecution.**
5. **There was no pre-sentence probation enquiry report.**
6. **That consideration was not taken of the convicts mitigation that was aged over 60 years,**

her husband is deceased and that she has two kids depending on her.

7. That consideration was not taken that the convict had been in custody from the morning of 3rd March 2016 to the time of being charged on 6th March 2016.

DETERMINATION

[3] The application before me is essentially for revision of a decision by a subordinate court under article 50(2)(q) of the Constitution, section 362, 364, 366 and 367 of the Criminal Procedure Code (hereafter the CPC). For the sake of jurisprudence, the right to apply for review where a person has been convicted is provided for in article 50(2) (q) of the Constitution. And the supervisory jurisdiction of this court draws from article 165(6) and (7) of the Constitution. Of great importance to note is that the jurisdiction as granted by the Constitution gives this court wide power to:-

“make any order or give direction it considers appropriate to ensure the fair administration of justice”.

Therefore, section 362 of the CPC and particularly the phraseology cited below merely provides the hemming of the powers of the court in the exercise of its supervisory jurisdiction, to be;

“...for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

[4] Applying the test, it is useful to note that the Applicant was convicted on her own plea of guilt. And, arguments being preferred for revision are:

(a) That the conviction was legally unsound as there was no government report to confirm whether the alleged alcoholic drink are what they are claimed to be and

(b) That the so called “muna” in count two was unknown in law.

These arguments especially (b) throw me back to section 2 of the Alcoholic Drinks Control Act which defines an “alcoholic drink” to include *inter alia* traditional alcoholic drink. The said Act does not however define what traditional alcoholic drink is. In my view, these are quite substantial matters which should be litigated in a formal appeal between the parties. Again, the sentence passed is provided for in section 62 of the Alcoholic Drinks Control Act. The section provides as follows:

62. General penalty

Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

I have meticulously perused the record and I note that, in passing the sentence, the trial magistrate considered the previous record of the Applicant especially that she had been convicted of and sentenced for similar offence in Cr. Case No 101 of 2016. This factor is important consideration in sentencing. Accordingly, the Applicant is not a first offender as has been claimed in ground 4 of the Revision Application; their claim thereto is erroneous and could be contrived to mislead the court. I do not, therefore, think that in the circumstances the sentence was illegal or harsh or excessive as claimed. In sum, I am not satisfied that I should grant revision in the circumstances of this case. Accordingly, in exercise of my discretion, I decline to review the conviction and sentence passed by the trial magistrate. For those reasons, the application for review is hereby declined. It is so ordered.

Dated, signed and delivered on 30th day of March 2017

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F. GIKONYO

JUDGE