



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT EMBU**

**CRIMINAL REVISION NO. 149 OF 2016**

**ESTHER NJUE ..... APPLICANT**

**VS**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. This is an application for revision brought under Section 362 and 364 of the Criminal Procedure Code it seeks for review of the sentence of the Principal Magistrate Runyenjes. The applicant was charged and convicted of the offence of selling alcoholic drinks without a licence contrary to Section 7(1)(b) as read with Section 62 of the Act and was sentenced to two years imprisonment and in default a fine of Kshs.50,000/= .

2. The applicant states that she pleaded guilty to the charge and was sentenced on 9th of March 2016 and that she has served part of the sentence. She states that she is remorseful and reformed and that she is fifty years old, married to a physically challenged husband and a mother of seven children. She claims to have a mental disorder, an allergy and also suffers from chest problems. Her plea to the court is that she is awarded a suspended sentence for the remaining period or whatever condition the court may find fit.

3. The respondent opposed the application arguing that the applicant was given an alternative sentence of a fine of Kshs.50,000/= which was reasonable. Taking into account the nature of the offence and the previous records of the applicant, and the prevalence of the offence in the area the sentence meted out was sufficient. The respondent states that no medical documents to prove her health condition were attached to the application and that the grounds relied on do not fall under Section 362 of the Criminal Procedure Code.

4. The offence of selling alcoholic drinks contrary to Section 7(1b) as read with Section 62 of the Alcoholic Drinks Act carries a penalty of a fine not exceeding Kshs.500,000/= or imprisonment for a term not exceeding three years or to both. The applicant pleaded guilty to the offence and the facts were read by the respondent. She was convicted on her own plea of guilty. It was noted by the trial magistrate that she was not a first offender having been convicted in the year 2010 and 2013 of similar offences which she confirmed.

5. The purpose of Section 362 is to correct any illegality or impropriety of any finding, sentence or order recorded or passed, and as to the irregularity of any proceedings of a subordinate court. In this case the applicant was sentenced to a fine of Kshs.50,000/= in default two years imprisonment. Considering the maximum sentence of the offence and the fact that the applicant was not a first offender having committed two previous offences.

6. The applicant did not attach any medical records to support her alleged health condition. Even assuming she has such conditions, there are adequate facilities in prison to treat her.

7. It was held in the case of *Republic Vs Kiritta KLR [2008] 614* that under Section 362 of the Criminal Procedure Code, the court can only interfere with the sentence imposed by the trial court if the same is illegal or improper.

8. In view of the provisions of Section 362 and the above decision, I find the sentence imposed being within the law and reasonable in the circumstances.

9. The facts and the circumstances of the case do not fall under Section 362 of the Code. The magistrate did not commit any illegality or impropriety in her finding, sentence or order.

10. I find no merit in this application and dismiss it accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 10TH DAY OF APRIL, 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Nandwa for Respondent**

**Applicant present**