

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL REVISION NO 137 OF 2017

SALIMINI AMIR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant filed an application for Revision dated 14th November 2017 on 20th November 2017. He was convicted of the offence of being drunk and disorderly contrary to Section 41 as read with Section 53(1) of the Taita Taveta Alcoholic Drinks Control and Licensing Act 2016 and sentenced to three (3) months without the option of a fine.

2. This court agreed with him and the State that the said sentence was harsh, severe and manifestly excessive warranting interference by this court. In fact it was an offence that would have attracted a non-custodial sentence. Indeed, the Probation Report dated 18th December 2017 by Johnstone M Kisyan'ga Community Service Officer recommended that the Applicant be repatriated back to his country.

3. Count II in respect of having been unlawfully in Kenya contrary to Section 53(v) (j) as read with Section 53 (2) of the Kenya Citizenship and Migration Act was withdrawn implying that he was legally in Kenya.

4. Having considered the proceedings and having heard the State and the Applicant, this court hereby direct as follows:-

1. The sentence of three (3) months in respect of Count III of disorderly conduct contrary to Section 41 as read with Section 53 (1) of the Taita Taveta Alcoholic Drinks Control and Licensing Act 2016 is hereby set aside and/or vacated and replaced with an order for Community Service Order for one (1) day.

2. As the Applicant has already served twenty seven (27) days in prison, I hereby direct that he be released forthwith unless he be held for any other lawful cause

3. It is so ordered

DATED and DELIVERED at VOI this 20th day of December 2017

J. KAMAU

JUDGE

In the presence of:-

Salimini Amir- Applicant

Miss Anyumba - for State

Susan Sarikoki – Court Clerk