

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 67 OF 2015

GLADYS WAMBUI MUCHINA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. This is an appeal against both conviction and sentence of one year imprisonment imposed by the court of the Senior Resident Magistrate upon the appellant on 7th August 2015 in respect of the two offences of selling traditional liquor without a licence contrary to sections 7 (1) (b) as read with section 61 of the Alcoholic Drinks Control Act No. 4 of 2010.
2. Counsel for the appellant has raised five grounds in his petition of appeal. In ground 1 counsel has stated that the learned magistrate erred in law and fact in proceeding to take facts before he had recorded a plea of guilty. In ground 2 he has stated that the learned magistrate erred in law and fact in recording the facts and mitigation and then thereafter entered a plea of guilty and conviction, which he asserts is unprocedural. In ground 3 counsel for the appellant has stated that the learned magistrate relied on the appellant's plea of guilty and never considered the requirements of section 7 (1) of the Act. In ground 4 he has stated that the learned magistrate erred in law and fact in failing to appreciate that the facts outlined by the prosecutor did not disclose any offence. And finally, in ground 5 the learned magistrate erred in law in sentencing the appellant to a term of imprisonment instead of imposing a fine.
3. This is a first appeal. I am required to find out whether the plea of the appellant was properly taken. I have done so and I find that the plea of guilty was in substance properly taken. It is clear that the charges were read against the appellant in respect of counts 1 and 2. Thereafter the appellant is recorded to have stated as follows: "Count I: True, Count II: True". In this regard, the trial court should have recorded a plea of guilty instead of the term "true". This was followed by statement of facts which the appellant confirmed were correct. Thereafter the trial court proceeded to convict the appellant on her own plea guilty on both counts. The accused accepted as correct the fact that she was found selling traditional liquor without a licence, which were seized and ordered destroyed at the end of the trial. I find that the facts outlined by the prosecutor disclosed the offences charged. I also find that there is no evidence of a frame against the accused person.
4. As regards sentence, the accused according to the prosecutor had been convicted of the same offence in Criminal case No. 1887 of 2014 and was sentenced to serve one year probation. In her mitigation, she stated that she had children whom she was supporting. The trial court considered the mitigation of the appellant. It also considered that she had one previous relevant conviction. Furthermore, the court took into account that the offence with which the appellant was convicted was prevalent. It then proceeded to sentence the appellant to a term of one year imprisonment on each count which he then ordered should run concurrently.
5. I have considered the grounds of appeal and I have reviewed the procedure followed in taking a plea of guilty. It substantially conforms with the requirements as set out by the Court of Appeal in *Adan v. R (1973) EA 445* There were errors which I have pointed out and these are curable errors in terms of section 382 of the Criminal Procedure Code.
6. The upshot of the foregoing is that the appeal is dismissed in its entirety.

JUDGEMENT DATED, SIGNED and DELIVERED in open court at **EMBU** this.25th day **FEBRUARY 2016**

In the presence of Ms Mbae for the State and Mr. Mutahi for the Appellant.

Court clerk Njue.

J.M. BWONWONGA

JUDGE

25.02.16