



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

REVISION CRIMINAL APPLICATION NO. 47 OF 2016

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA

AND

**IN THE MATTER OF THE CRIMINAL CASE NO. 146 OF 2016 AT THE SRM'S COURT AT
OGEMBO**

AND

**IN THE MATTER OF AN APPLICATION BY SELINA MORAA ORERI FOR REVISION OF THE
SENTENCE**

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein **SELINA MORAA ORERI** was the accused at Senior Principal Magistrate's Court at Ogembo in **Criminal Case No. 146 of 2016**. She was charged with selling alcoholic drinks without a licence contrary to **Section 7 (1) (b)** as read with **Section 62 of the Alcoholic Drinks Control Act No. 4 of 2010**. The particulars of the charge were that on 31st January 2016 at Kebere sub-location in Gucha Sub-County within Kisii County she was found selling alcoholic drink without a licence to wit with 8 litres of chang'aa
2. She pleaded guilty to the charge and was convicted to six months imprisonment without option of a fine after the prosecution led evidence that the accused was a habitual offender as she had on two previous convictions paid a fine of Kshs. 2,000/= and Kshs. 20,000/ respectively.
3. The applicant has now moved this court through her advocate Mr. Ondari seeking revision of the above sentence. She has also sworn an affidavit deponing that the criminal case that prosecution made reference to during the hearing i.e. Criminal Case no. 2443 of 2015 actually involved one Stella Moraa and not herself and that the accused in that case was infact fined Kshs. 100,000/= as opposed to Kshs. 20,000/= as stated by the prosecution. She has thus contended that the trial court mistakenly relied on unsubstantiated evidence to convict her and hence meting a sentence that was excessive, callous and extremely harsh in the circumstances without an option of a fine.
4. At the hearing of this matter Mr. Ondari for the applicant submitted that the language used by the lower court was not indicated and that the prosecution misled the court on the fact that the applicant was a habitual offender.

5. Mr. Otieno for the state did not object to the said revision as he conceded to the fact that the applicant was unfairly jailed as a habitual offender which weighed heavily on her 6 months sentence.
6. I have taken into account the fact that prosecution conceded to this application, the fact that the accused was unfairly branded as a habitual offender, the fact that the applicant appears elderly and sickly, and the period of almost two months served in prison I invoke my powers under Section 362 of the Criminal Procedure Code and revise/reduce the sentence to the period already served.
7. The applicant shall be set free forthwith unless she is otherwise lawfully held.

Delivered, dated and signed in at Kisii on 31st day of March, 2016.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Obure for Ondari for the Accused

Omwoyo court clerk