



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPLICATION NO. 292 OF 2015
MONICA WANJIRU GACHOKA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to Section 362 of the Criminal Procedure Code, the original record in the Chief Magistrate’s Court at **Nairobi Criminal Case No. 2064 of 2015—Republic v Monica Wanjiru Gachoka**, has been forwarded to this court with a view to the court satisfying itself as to correctness, legality or propriety of the sentence and as to any irregularity of the said trial record.

The Applicant herein was charged with the offence of Manufacturing of Excisable Goods without a licence contrary to Section 15(1)(a) as read with Section 38(1)(a) of Excisable Duty Act of 2015. It was alleged that on the 8th day of December, 2015 at Chemi Chemi Investment in Ongata Rongai within Kajiado County was found manufacturing excisable goods without a licence from the Commissioner of Domestic Taxes. She was convicted on her plea of guilty and sentenced to pay a fine of Ksh. 20,000/ in default serve six months imprisonment.

The Applicant came to this court vide a letter dated 17th December, 2015 in which she faulted the trial magistrate for imposing an illegal sentence. According to her, the fine was supposed to be Ksh. 2275 /=. Therefore, a fine of Ksh. 20,000/= was harsh and excessive in the circumstances. Section 15(1)(a) of the Excisable Duty Act,2015 provides as follows;

(1)A person shall not undertake any of the following activities unless the person is licenced or registered by the Commissioner to undertake the activity-

a. The manufacture of excisable goods in Kenya

Whilst Section 38(1)(a) provides as under;

1. A person who undertakes an activity referred to in Section (1)(a) or(b) without being licenced to do so shall be liable to a penalty equal to-

2. (a) double the excise duty that would have been payable if the person were licenced in the case of a person to whom Section 15(1)(a) applies.

In the present case, the Applicant was found manufacturing excisable goods worth Ksh. 1,137.50/=. Hence the fine should not have exceeded double this amount which is Ksh. 2,275. Accordingly, I entirely agree with the Applicant that the fine imposed on her was not only illegal but high and excessive. An illegality on the trial record has been manifested and the same calls for revision of the sentence.

In the result, I set aside the fine of Ksh. 20,000/= that was imposed and I substitute it with a fine of Ksh. 2,275/=. The excess fine of Ksh. 17,725/ shall forthwith be refunded to the Applicant. It is so ordered.

DATED and DELIVERED this 30th day of MARCH, 2016

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. The Applicant in person.*
- 2. M/s Wario for the Respondent.*