

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 485 OF 2013

(FORMERLY NYERI HIGH COURT CRIMINAL APPEAL NO. 221 OF 2011)

**(Appeal against Conviction and Sentence in Kandara SRM Criminal Case No 641 OF 2011 – C.
Kithinji, DM II)**

PAULINE WAMBUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant in this appeal, **Pauline Wambui**, was on 21/10/2011 convicted upon her own plea of exposing liquor for sale without a licence contrary to **section 27(1), (3) and (4)** of the ***Alcoholic Drinks Control Act***. She was sentenced to one (1) year imprisonment. She appealed against both conviction and sentence.

2. On 07/12/2011 the Appellant was admitted to bail pending disposal of her appeal vide ***Nyeri HC Misc Criminal Application No 80 of 2011***. She was released from jail on 08/12/2011 after she had served 1 month and 16 days.

3. Though represented by counsel in the appeal, her advocate failed to attend court a number of times and she finally presented the appeal herself. She merely stated that she presented her appeal as per the grounds in the petition prepared and filed by her advocate.

4. That petition contains two grounds firstly that no facts were read out by the prosecutor to which the Appellant could have been called out to respond to; and further, that the particulars of the charge contained no facts capable of being admitted. In other words, that the plea was not unequivocal. The other ground of appeal is with regard to sentence, of which it is said that it was manifestly harsh in the circumstances of the case.

5. Learned ***Prosecution Counsel*** for the Respondent supports the conviction and sentence. He submitted that the charge was read to the Appellant in a language that she understood; that she understood the charge; and that she freely pleaded to it. As for sentence, learned counsel submitted that the trial court properly observed that the Appellant had appeared before the court a number of other occasions and that she had a previous, relevant conviction which she admitted. She therefore deserved the sentence imposed.

6. I have read the record of the trial court. I have also looked at the relevant statute, the ***Alcoholic Drinks Control Act, Cap 121A***. **Section 27** of the Act under which the Appellant was charged deals with ***conformity with requirements of the Act of any alcoholic drink manufactured, imported or distributed***. The section does not provide for any offence related to exposure for sale of any alcoholic drink without a licence. Though **section 37** of the Act provides for offences of sale of alcoholic drinks without a licence, the offences thereunder are with regard to ***permitting consumption of alcoholic drinks in "off-licence" premises***. I can find in the Act no provision that expressly criminalizes outright sale of alcoholic drinks without a licence.

7. As it is, the particulars of the offence laid against the Appellant did not disclose the offence charged.

The charge was fatally defective and should not have been admitted. The Appellant's plea was thus not unequivocal.

8. I will allow the appeal in its entirety. The conviction is quashed and the sentence imposed set aside. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 14TH DAY OF APRIL 2016

H P G WAWERU

JUDGE

DELIVERED AT MURNG'A THIS 15TH DAY OF APRIL 2016