

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 18 OF 2016

ISAAC MWAURA

REUBEN GITAU.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in CR. 72 of 2016 at Karaba Principal Magistrate's Court by Hon. P.M. Kiama - PM on 1st April, 2016 2016)

JUDGEMENT

1. The appellants were convicted on their own plea of guilty to the offence of selling alcoholic drinks without a licence contrary to section 7 (1) (b) as read with section 62 of the Alcoholic Drinks Control Act (Cap 121A) Laws of Kenya, and were sentenced to a fine of Kshs 100,000/- and in default each was to serve 12 months imprisonment, by the court of the Principal Magistrate at Karaba on 1st April 2016.

2. The penalty provided for those who are convicted under the Alcoholic Drinks Control Act is Kshs 500,000/- or imprisonment for a term not exceeding 3 years or to both. In terms **section 62** provides as follows ***“Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years or to both”*** In sentencing the appellants, the trial court took into account that the fine prescribed under the Act is Kshs 500,000/-. It also took into account the quantity of the beer that they were found selling without a permit and the potential danger posed to the community. The appellants were found selling a 185 crates of beer known as viana and 18 crates of another brand of beer called summit.

3. They appealed to this court against both conviction and sentence. Additionally, they also appealed against the order of forfeiture of the beer to the state.

4. During the hearing of this appeal their counsel, Mr Eddie Njiru abandoned the appeal in respect of both conviction and sentence and proceeded only to challenge the order of forfeiture. He submitted in this regard that the order for forfeiture was illegal, because it is not provided for under section 62 of the Alcoholic Drinks Control Act (Cap 121A) Laws of Kenya. He therefore urged the court to set it aside.

5. Ms Mbae for the state conceded that the order for forfeiture was not authorized by the law.

6. I have considered the submissions of both counsel. I find that the order of forfeiture is not authorized by **section 62 of the Alcoholic Drinks Act**. This is clear from the penalty provisions of section 62 of the said Act. I also find that it is not authorized by **section 7 (1) (b)** of the same Act.

7. In view of the foregoing, the forfeiture order is hereby set aside.

8. The crates of beer should be returned to the appellants.

JUDGEMENT DELIVERED, DATED and SIGNED in open court at **EMBU** this **26th** day of **JULY, 2016**.

In the presence of Mr E. Njiru for appellants and Ms Mbae for the respondent.

Court clerk Njue

J.M. BWONWONGA

JUDGE

26.07.16