

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 27 OF 2016

(From original conviction and sentence in Criminal Case No. 61 of 2016 of the Resident Magistrate's Court at Wajir – B. ROGOCHO - RM).

TERESIA WANJIRU APPELLANT

V E R S U S

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with possession of alcoholic drinks that do not conform to the prescribed standards Contrary to section 27(1)(B) as read with section 27(4) of the Alcoholic Drinks Act No. 4 of 2010. The particulars of the offence were that on 21st February 2016 at around 7.00 Pm at Habasweni Trading Centre in Habasweni Sub county within Wajir County was found possessing illegal alcoholic drink to wit 20 litres of Kirong'ang'a contravening Alcoholic Drinks Act No. 4 of 2010.

She was recorded as having pleaded guilty to the charge. She was thus convicted and sentenced to serve 3 years imprisonment.

She then filed this appeal in this court against sentence.

At the hearing of the appeal, she said that she was a widow with dependant children and sold alcohol to care for the said children. She said she was old and sick and would look for another way of earning.

Learned prosecuting counsel Mr. Okemwa submitted that the appellant was asking for leniency of sentence. Counsel submitted also that the appellant had a previous record but did not waste courts time. Counsel said that though the prosecution stated at the trial that the appellant was a repeat offender, the prosecutor did not give any particulars to support that offence.

I have considered the appeal and the submissions of the appellant and the prosecuting counsel. During the proceedings in the subordinate court the appellant stated that she brew alcohol because it was the only thing she could do for a living. The prosecutor asked for a harsh and deterrent sentence saying that the appellant was a repeat offender.

In sentencing the appellant to imprisonment for 3 years, the court stated that she was a repeat offender. In my view since the particulars of the previous offence were not given by the prosecutor, the trial court should have taken it that the appellant was a first offender. She also pleaded guilty to the charge and in my view she did not deserve the sentence for three years imprisonment as she did not waste the court's time. I will thus reduce the sentence.

I must however warn the appellant against continuing with the brewing of the alcohol. Such illegal conduct affects the society especially the young people adversely and in a big way. The appellant should thus look for other ways of earning a living and taking care of her grandchildren.

I allow the appeal on sentence. I set aside the sentence imposed. I order that the appellant serves the sentence which she has already served. In my view that is adequate punishment for her. She will thus be released immediately after delivery of this judgment, unless otherwise lawfully held.

Dated and delivered at Garissa this 29th day of September 2016.

GEORGE DULU

JUDGE