

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. CRIMINAL APPLICATION CASE NO. 10 OF 2016

(In the matter of an intended Appeal)

BETWEEN

ABEL MUTUMA MUNGIRIA.....APPLICANT

- VERSUS -

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. ABEL MUTUMA MUNGIRIA (*"the Applicant"*) was on 25th July, 2016 arraigned before the Chuka Senior Resident Magistrate's Court with the offences of being in possession of Cannabis Sativa (Bhang) contrary to section 3 (1) as read with section 3 (2) (a) of the Narcotic drugs and Psychotropic Substances Control Act, 1994 and dealing with alcoholic drinks contrary to section 7 (1) (b) of the Alcoholic Drinks Control Act of 2010 (*"the relevant law"*).

2. It was alleged that on the 23rd July, 2016 at Kaare Location within Tharaka Nithi County, the Applicant was found in possession of 800 grams of Cannabis Sativa which was not under medical preparation and alcoholic drinks namely, *"Mugacha"* 100 litres which was not in conformity with the requirements under the relevant law. The Accused pleaded guilty to both counts, was convicted and sentenced to 2 years on the first count and fined Kshs.15,000/- in default three (3) months imprisonment on the 2nd count. The sentences were to run consecutively.

3. On 22nd September, 2016, the Applicant filed Summons praying to be allowed to lodge what he termed as *"a mitigation appeal"* out of time. Annexed to that summons is a document christened *"Grounds of Appeal"*. Looking at the 10 grounds set out therein, none of them challenges the trial court's proceedings. Indeed prayer Nos. 2 and 4 of the Summons are to the effect that the Applicant's mitigation be considered. Ground Nos. 8 and 10 of the *"Grounds of Appeal"* are to the effect that the Applicant's mitigation be considered and his sentence be reviewed. Having considered the application and the said grounds, the same cannot be said to be grounds of appeal perse that are meant to challenge the trial court's decision. They are mitigation grounds upon which the Applicant seeks for the review of his sentence. Accordingly, I will consider this as an application for review/ revision.

4. The grounds for the revision are that the Applicant is remorseful, he was the sole breadwinner of his family; he was taking care of two children of his sister; that his children disappeared after his arrest and that he will not repeat the offence again. As I have already stated, this is not an appeal and the grounds set out in the *"Grounds of Appeal"* document can not be a basis for challenging the trial court's decision. In any event, the Applicant having pleaded guilty, he cannot appeal against the sentence unless on the legality of the same (see **section 348 of the Criminal Procedure Code**).

5. As regards revision, Section 362, gives this court jurisdiction to call for the records of the trial court and review the proceedings. That section provides:-

" 362.The High Court may call for and examine the record of any criminal proceedings before

any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court"

6. In this regards, the powers of this court under that section is for it to satisfy itself of the correctness, legality or propriety of any finding, sentence or order passed by the trial court and as to the regularity of the proceedings. I have looked at the record and the grounds for review. I am satisfied that the proceedings before the trial court were regular and the sentences imposed legal. There is nothing on record to warrant the interference of the trial court's decision the Application should be of good conduct and pray that he be considered for CSO proramme.

7. Accordingly, the application is without merit and is dismissed.

DATED and Delivered at Chuka this 20th day of December, 2016.

A. MABEYA

JUDGE