

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. CRIMINAL APPLICATION CASE NO. 14 OF 2016

(In the matter of an intended Appeal)

BETWEEN

BENSON KIRIA NYAGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. BENSON KIRIA NYAGA (*"the Applicant"*) was on 14th July, 2016 arraigned before the Marimanti Senior Resident Magistrate's Court with the offence of being in possession of Alcoholic Drink Contrary to Section 27(1) (b) of the Alcoholic Drink Control Act, 2010 (*"the relevant law"*). It was alleged that on 13th July, 2016 at Kanyaru village, Ntugi Location, Tharaka Nithi County the Applicant was found in possession of 20 litres of Alcoholic Drink namely *"Mugacha"* which was not in conformity with the requirements of the relevant law. He pleaded guilty, was convicted and fined Kshs.200,000/- in default to serve 2 years imprisonment.

2. On 22nd September, 2016, the Applicant lodged an application to be allowed to lodge *" a mitigation appeal"* out of time. I have looked at the application and the document christened "Grounds of Appeal". The same are not grounds of appeal perse. They only amount to mitigation grounds. They do not challenge the trial court's decision on any aspect. I consider this to be an application for review.

3. Under Section 362 of the Criminal Procedure Code, this court is granted power to call for a lower court record and satisfy itself as to the legality or propriety of the proceedings or sentence. I have looked at the trial court's record. The Applicant pleaded guilty and is therefore not entitled to an appeal therefrom (see **section 348** Criminal Procedure Code). I have looked at the sentence and I find the same to have been in accordance with the law. I have considered that the trial court not only considered the mitigation given by the Applicant but it also called for and considered a pre-sentence report which was negative to the Applicant.

4. In this regard, I find nothing untoward in the trial court's record to warrant any interference with its decision. The proceedings were regular as was the sentence legal.

5. The Applicant should be of good conduct and pray to benefit from the CSO programme at the appropriate time Accordingly, I decline to review the sentence and dismiss the application

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

A.MABEYA

JUDGE