

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

MISC. CRIMINAL APPLICATION CASE NO. 12 OF 2016

(In the matter of an intended Appeal)

BETWEEN

EDWARD MURITHI KATHENYA.....APPLICANT

- VERSUS -

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. EDWARD MURITHI KATHENYA (*"the Applicant"*) was on 16th July, 2015 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) as read with section 27 (4) of the Alcoholic Drinks Control Act of 2010 (*"the relevant law"*). It was alleged that on 16th July, 2016, at Marimanti Location, Tharaka South of Tharaka Nithi County, the Applicant was found in possession of 20 litres of alcoholic drink namely, Kathoroko which was not in conformity with the requirement of the relevant law. The Applicant pleaded guilty, was convicted and fined Kshs.200,000/- in default to serve two (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 per se. 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 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 seen that the trial court considered not only the mitigation given by the Applicant but 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. The Applicant should be of good conduct and hope to benefit from the CSO programme at the appropriate time.

5. Accordingly, I decline to review the sentence and the Application is dismissed.

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

A.MABEYA

JUDGE