



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**MISC. CRIMINAL APPLICATION CASE NO. 13 OF 2016**

**(In the matter of an intended Appeal)**

**BETWEEN**

**JAMES MUKATHE GACWE.....APPLICANT**

**- VERSUS -**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION**

1. JAMES MUKATHE GACWE (*"the Applicant"*) was on 20th July, 2016 arraigned before the Senior Resident Magistrate's Court, Marimanti 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 Drink Control Act, 2010 (*"the relevant law"*). It was alleged that on 19<sup>th</sup> July, 2016, at Mwanyani Location in Tharaka South District, Tharaka Nithi County, the Applicant was found in possession of 120 litres of alcoholic drink namely, Nguzo which was not in conformity with the relevant law. The Applicant pleaded guilty, was convicted and fined Kshs.200,000/- in default to serve two (2) years imprisonment.

2. On 22<sup>nd</sup> 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 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 not only considered 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.

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 20<sup>th</sup> day of December, 2016.**

**A.MABEYA**

**JUDGE**

