



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 1 OF 2015**

**HARRIET CHEPKOECH KIRUI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G E M E N T**

1. The appellant (Harriet Chepkoech Kirui) was charged and convicted of two offences under the Alcoholic Drinks Control Act. These were:-

**Count 1-** Possession of a substance (kangara) used in distilling changaa without a licence Contrary to section 27(1) (2) of the Act.

**Count 2-** Possession of ten(10) litres of Chang'aa without a licence.

2. The appellant admitted the charges in both counts and was sentenced as follows;-

**Count 1-** A fine of Kshs.60,000/= in default one(1) year imprisonment.

**Count 2-** A fine of Kshs.10,000/= in default one(1) year imprisonment.

There was a further order that the default sentences run concurrently.

3. The appellant appealed against the conviction and sentence raising from grounds which I have consolidated into two grounds namely:-

(i) The plea was equivocal.

(ii) The sentence was harsh and excessive.

4. When the appeal came for hearing the appellant who was unrepresented submitted that she was satisfied with conviction and only the sentence reduced to a non-custodial one. The state through M/S Kiptoo did not oppose the request.

5. In HCRA NO.3/15 where the appellant had been charged and convicted of a similar offence, I made a finding that there is no offence in the Alcoholic Drinks Control Act known as **“Possession of a substance used in distilling an alcoholic drink.”**

6. Infact there is no section known as section 27(1) (2) of the Alcoholic Drinks Control Act. However, if the drafters of the charge sheet meant section 27(1) & (2) of the said Act, then the same in not

applicable in Count I since it comprises of several offences. A charge must be specific to enable an accused person know the exact offence he is charged with.

7. In this case I find Count 1 to be defective as the offence therein is non-existent. She could therefore not have pleaded to a non-existent charge.

8. I have checked the record in respect to count 2 and find it to have been unequivocal and will therefore only address the issue of sentence.

9. I find no justification in a default sentence for Kshs.60,000/= and Kshs. 10,000/= being the same. This cannot be explained. Secondly the order that the default sentences run concurrently is an unlawful orders. Default sentences always run separately; if an order has to be made then the order should be that the sentences run consecutively.

10 .The appellant was found in possession of 10 litres of changaa. The default sentence of one (1) year is harsh and excessive in all circumstances. It is set aside.. I note that she has already served 4 months in prison.

11 .The result is as follows. The Appeal on count 1 succeeds. The conviction is quashed while the sentence is set aside.

12 .The conviction in count 2 is confirmed. The appeal only succeeds in terms of the sentence which is set aside and substituted with a sentence of the period already served.

13 .The order that sentences run concurrently is also set aside.

14 .The Appellant to be set free unless otherwise lawfully held under a separate warrant.

Orders accordingly.

**Dated, signed and delivered this 27<sup>th</sup> February 2015.**

**H.I ONG'UDI**

**JUDGE**

In the presence of:

M/s Kiptoo for state

Lagat-Court Assistant

Appellant