

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION NO. 5 OF 2015

MERCY CHEPKWONY.....APPLICANT

VERSUS

REPUBLICRESPONDENT

(Arising from Bomet Resident Magistrate's Court

Criminal Case No. 119 of 2015)

R U L I N G

This file was called for following my visit to the Kericho G.K. Women's Prison on 26th March, 2015. Upon perusal of the record I note that the applicant was convicted of two offences namely;

- i. *Being in possession of Kangara and sentenced to one(1) year imprisonment.*
- ii. *Being in possession of chang'aa and sentenced to six(6) months imprisonment.*

The two offences were brought under **Section 27(1) (2)** as read with **Section 27(4)** of the **Alcoholic Drinks Control Act**.

First of all there is no offence under the said Act known as being in possession of a substance used for distilling chang'aa. Further, Kangara is not an alcoholic drink under **Section 2** of the Act. She should not have pleaded to count 1. I therefore quash the conviction and set aside the sentence on count 1.

For count 2 – the conviction is upheld. She was sentenced to six(6) months imprisonment with no option of a fine yet she was a first offender. I find that to be too harsh. She has served two(2) months and one(1) week.

I set aside the sentence and substitute it with a sentence of the period already served. She will be released forthwith unless lawfully held under a separate warrant.

Dated and signed this 10th day of April, 2015

H.I. ONG'UDI

JUDGE