

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL CASE NO 33 OF 2014

SALOME WAITHIRA MBURU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against Conviction and Sentence in Thika CM Criminal Case No 1229 of 2014 - J W Onchuru, PM)

R U L I N G

1. The Appellant **Salome Waithira Mburu** was convicted upon her own plea, in count one, of **possession of alcoholic drinks without a license** contrary to **section 27(1) (b), (2) & (4)** of the **Alcoholic Drinks (Control) Act, No 4 of 2010**, and in count two, of **selling adulterated drinks** contrary to **section 38(1) (a) as read with (2)** of the same Act. For the offence in count one she was fined KShs 500,000/00 and in default to serve two (2) years imprisonment. In count two she was fined KShs 700,000/00 and in default to serve three (3) years imprisonment. She has appealed against both conviction and sentence.
2. Pending disposal of her appeal the Appellant has sought, by **chamber summons dated 11/04/2014**, to be released on bail. The Respondent has opposed the application.
3. In presenting the application, learned counsel for the Appellant merely stated, without any elaboration, that the charge in count one was defective, and that that in count two was duplex to count one. In her submissions learned counsel for the Respondent pointed out that the Appellant pleaded guilty, and that under **section 348** of the **Criminal Procedure Code, Cap 75** no appeal lies except against sentence. She also submitted that the plea was unequivocal in that the charge was read to the Appellant in a language she understood, she pleaded guilty and also agreed with the facts given by the prosecution, which facts disclosed the offences charged. Learned counsel was therefore of the view that the appeal did not have overwhelming chances of success.
4. I have considered the submissions of the learned counsels. I have also perused the charge sheet and the proceedings of the trial court. I consider that learned counsel for the Appellant did not fully argue the legal issues that he raised – that is, that the charge in count one was fatally defective, and that the charge in court two was duplex to count one. It may just be as well, because any decision on those two issues may effectively determine the appeal itself. So it is best that full arguments on them be made at the hearing of the appeal.
5. I hold that it has not at this stage been demonstrated that the appeal has overwhelming chances of success. I therefore refuse the application for bail pending disposal of the appeal. It is dismissed. It is so ordered.

DATED, SIGNED AT MURANG'A THIS 23RD DAY OF JULY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF JULY 2015