



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL APPEAL NO. 69 OF 2015

(Being an Appeal from original Conviction and Sentencing in the Chief Magistrate's Court Naivasha Criminal Case 2015 of 2014 by, S. Muchungi – RM)

MARY NJERI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

J U D G M E N T

1. This appeal emanates from the conviction and sentence based on the Appellant's plea of guilt in Criminal Case Number 2051 of 2014. Therein, the Appellant was charged with two counts of Being in possession of sub-standard liquor Contrary to Section 31 (2) as read with Section 31 (3) of the Alcoholic Drinks Control Act.
2. The particulars state that the Appellant had in her possession on 7th November, 2014 at Karagita Naivasha, 30 litres of *Chang'aa* in count 1 and 600 litres of *Busaa* in count 2, which did not conform to the requirements of the Act in respect of packing, labelling and standardizing.
3. The court sentenced the Appellant to one year imprisonment on each count. This sentence is the subject of her appeal to this court, titled "**Petition of Appeal by Mitigation**" (sic).
4. The Appellant raised her personal circumstances as a single mother of three children, all school going, one of them handicapped as mitigatory factors. She had been released on bail pending appeal.
5. The Director of Public Prosecutions through Mr. Koima did not oppose the appeal, terming the sentence illegal as it went beyond the prescribed punishments.
6. I have perused the lower court record. The Appellant was given a chance to address the court in mitigation during plea. She merely asked for forgiveness, withholding the personal circumstances she now pleads in much detail before this court. An Appellant who fails to mitigate effectively before the trial court cannot blame the sentencing court.
7. In this case, the Appellant had in her possession a large amount of substandard liquor. However, no previous convictions were proved against her. The sentence of 1 year imprisonment without the option of a fine was unlawful. Under the Section 31 (3) of the Act the maximum sentence provided for the offences for which she was convicted is a fine of Shs. 50,000/= or six months imprisonment in default, or both.

8. I do therefore set aside the sentence of the lower court in both counts and substitute therefor a fine of Shs 20,000/= in default 4 months imprisonment on the first count, and a fine of Shs 30,000/= in default 4 months imprisonment, on the second count.

Delivered and Signed at Naivasha this **23rd** day of **October, 2015**.

In presence of:

State Counsel : Ms Waweru

For Appellant : N/A

Court Clerk : Steven

Appellant : Present

C. MEOLI

JUDGE