



**REPUBLIC OF KENYA**

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

**HC CR. REVISION NO. 13 OF 2015**

**CONSOLATA NEBERE BARASA----- APPLICANT**

**VERSUS**

**REPUBLIC----- RESPONDENT**

**RULING**

1. In the decision of Odero Vs Republic (1984) KLR 621 Bratt and Mbaya JJ Stated

**“In cases where a person has been charged with and convicted of two or more counts involving the same transaction, the practice is to direct that the sentences should run concurrently.”**

And that is the General Rule.

2. Here, the Applicant was charged with 2(two) counts. First that she was selling Alcoholic Drink without a Licence contrary to Section 7(1)9b) as read with Section 62 of The Alcoholic Drink Act No. 4 of 2010. In Count 2, she faced a charge of being in possession of Alcoholic Drink without a Licence contrary to Section 7(1)(b) as read with Section 62 of The Alcoholic Drinks Act No. 4 of 2010.

3. Upon pleading Guilty on both counts, the State Counsel read out the facts as follows;-

**“ Sergeant Wanyama and APC Kiprotich tipped that, the Accused dealt with illicit brew Kangara and changaa. She did not have a licence. 22 litres of changaa and 100 litres of Kangara. I produce the same as exhibits.”**

Those brief facts suggest that the two counts involved one transaction. But the Hon. Learned Trial Magistrate upon imposing a fine of Kshs. 22,000/- in default 2 months imprisonment in Count 1 and a fine of Kshs. 100,000/- in default 3 months imprisonment in Count 2, ordered that the sentences would be consecutive. The Learned Magistrate did not explain why she departed from a general principle of sentencing and thereby affronted the principle.

4. In Revision, I do hereby set aside the order making the sentence consecutive and do hereby order that they run concurrently.

Dated, signed and delivered at Busia this 21<sup>ST</sup> Day of October 2015.

**F. TUIYOTT**

**JUDGE**

In the presence of :-

Oile - C/Assistant

N/A - For the State

Applicant in person