



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NUMBER 63 OF 2014**

**HELLEN WANJIKU ..... APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(An appeal against Chief Magistrate's Court at Naivasha in Criminal Case No. 419 of 2014)*

**JUDGMENT**

1. This is an appeal against the conviction and sentence of the appellant in Chief Magistrate's court at **Naivasha in Criminal Case No. 41 of 2014.**

The appellant was charged, on **Count 1** with the offence of selling alcohol before the permitted hours contrary to **Section 34(a) of the Alcoholic Drink Control Act No. 4 of 2010.** The facts as stated in the charge sheet on count 1 are that on the 27<sup>th</sup> day of February 2014 at about 1.00p.m. at Gilgil township in Gilgil District within Nakuru County the appellant was found operating “Dreams” bar before the permitted hours of sale at 1.00p.m. instead of 5.00p.m.

On count II, she was charged with the offence of operating a bar without **Alcoholic Drinks Liquor Licence Contrary to Section 7(1)** as read with **Section 62 of the Alcoholic Drinks Act No. 4 of 2010.**

The particulars of the charge as stated are:

***On the 27<sup>th</sup> day of February 2014 at about 1.00p.m. at Gilgil township in Gilgil District, within Nakuru County, was found operating “Dreams Bar” without a liquor licence for the year 2014.”***

The record shows that the appellant when arraigned before the trial court on the 28<sup>th</sup> February 2014, the substance of the charges under both courts and every element thereof were stated to her by the counts in a language she understood and upon being asked whether she admits or denies the truth of the charges replied:

Count 1- True

Count 2- True

2. The record shows that the language used by the court was English/Kiswahili. Having admitted the commission of the offences and her guilt, the court proceeded to enter a plea of guilty on both counts. The prosecutor also produced the exhibits No. 1 (a) – (d).

3. In mitigation, the appellant is recorded to have said that she was sorry, and had children.

The court upon convicting the appellant proceeded to sentence her to a fine of of Kshs.20,000/= and in default 2 months imprisonment and on count 1 and Ksh.15,000/= in count 2 and in default 2 months imprisonment.

4. The Petition of Appeal dated 13<sup>th</sup> march 2014 raises 6 grounds as follows:

1. THAT the learned Magistrate erred in law by convicting the appellant for the offence of operating a bar without alcoholic licence while the same was fully paid for.
2. THAT the learned magistrate erred in law and fact by convicting the appellant operating a bar without Alcoholic license while it was belong the powers of the Appellant.
3. THAT the learned Magistrate erred in law and fact b convicting the appellant for operating a bar without alcohol license while the issuing authority NACADA was to blame having taken receipt of the license fees from the Appellant.
4. THAT the learned Magistrate erred in law and fact in ordering for the forfeiture of the Appellants drinks while the alcoholic Drink license was fully paid for.
5. THAT the plea as taken by the Appellant was unequivocal
6. THAT the fine of Kshs.15,000/= and Kshs.20,.000/= is harsh, excessive and severe and should be set aside.

5. In his submissions on the appeal, Advocate for the Appellant stated that the charges were not clear as the court did not use the exact words, and that when the appellant was responding to the plea, she stated that she had paid for the liquor licence and was waiting its issuance. He stated that that information was not recorded. He stated that the licence was indeed issued after the plea was taken, to run from **16<sup>th</sup> November 2013 to the 6<sup>th</sup> November 2014.**

On the second count, the appellant submitted that under **Legal Notice No. 206 17<sup>th</sup> December 2010**, there was no time indicated for persons taking meals.

He therefore urged that the conviction and sentence be set aside, that the fines paid be refunded and the confiscated drinks be refunded.

6. The appeal was opposed by the Director for Public Prosecutions(DPP). Ms. Rugut submitted that the record of the proceedings was clear and a plea of guilt was entered. It was her submission that at the time of the plea the appellant never produced the licence nor denied the charges, that the appellant was trying to introduce new evidence through the appeal which is unprocedural. She urged the court to uphold the conviction and sentence.

7. The court has considered the record of the proceedings on the 28<sup>th</sup> July 2014 before the trial court. The court is guided by the proceedings as recorded. The charge sheet and the particulars of offences as stated, as I can discern have no faults. The appellant pleaded guilty in answer to the charges. If she had paid for the licence as she now wants the court to believe, nothing prevented her from stating so in court. She did not produce the **Gazette Notice** referred to by her Advocate, or even attempted to tell the court that the patrons found in the bar were taking meals. It is now too late in the day to tender such evidence. It is unprocedural and can only be allowed upon application for a revision.

8. I agree with the DPPs advocate that the conviction and sentence were proper and no good reasons or grounds were argued to secure setting aside of the same.

The appeal is disallowed.

**Dated, signed and delivered in open court this 19<sup>th</sup> day of November 2015.**

**JANET MULWA**

**JUDGE**