



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 622 OF 2013

ESTHER SYONTHI MUSYOKA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. The Application dated **12th November, 2013** is for review and/or discharge of the applicant on medical or humanitarian grounds. It is premised on grounds that the applicant was sentenced to **18 Months imprisonment**; she is aged **70 years** and suffers from diabetes and loss of sight.
2. In his submissions pursuant to provisions of **Section 364** of the **Criminal Procedure Code**, **Mr Kinyua** for the Applicant stated that the sentence meted out against the Applicant was per the provisions of **Section 34(b)** of the **Alcoholic Drinks Control Act 2010**, instead of **Section 34(a)** of the **Act**, the law against which she was charged.
3. **Mrs Abuga**, for the State was in agreement that the sentence imposed was excessive but argued that the applicant had a previous conviction. She called upon the court to impose a non-custodial sentence in the premises taking into consideration her age.
4. The applicant was charged with the offence of being in possession of alcoholic drinks for sale without a licence contrary to **Section 34(a)** of the **Alcoholic Drinks, Control Act No. 4 of 2010**. The applicant having pleaded guilty to the charge was convicted. A sentence of **eighteen (18) months** was meted out.
5. **Section 34** of the **Alcoholic Drinks Control Act, 2010** provides thus:-

“Any person who sells an alcoholic drink or offers or exposes it for sale or who bottles an alcoholic drink except under and in accordance with and on such premises as may be specified in a licence issued in that behalf under this Act commits an offence and is liable-

- a. ***For a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or to both;***
- b. ***For a second or subsequent offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.***

And in addition to any penalty imposed under paragraph (a) or (b), the court may order, the forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drinks”.

6. The applicant having been a repeat offender ought to have been sentenced to a fine not exceeding **100,000/=** or for imprisonment of a term not exceeding **one year**. The sentence imposed of

- eighteen months imprisonment was therefore illegal. In the circumstances I do quash it.
7. The applicant is said to be **70 years old**. I have perused treatment notes in respect of the applicant dated **5/2/2013** where her age is indicated as **67 years**. She has averred that she suffers from loss of sight due to diabetic condition. This is not supported by medical evidence.

However, considering the fact that she has served sentence of about **4 months**, I will substitute her sentence to the term already served.

8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 17TH day of FEBRUARY 2014

L.N. MUTENDE

JUDGE