

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 157 OF 2014

JARED SILAS AKHONYAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. This is a Notice of Motion dated 23rd day of May 2014, brought under **Section 357** of the **Criminal Procedure Code**. The applicant seeks orders of court to admit him to bail/bond pending the hearing and determination of **Criminal Appeal No. 57 of 2014**. He relies on the grounds on the face of the application and the annexed affidavit of Stephen Njau in support of the application on 23rd May 2014.
2. The appeal stems from the conviction of the applicant in **Cm Cr. Case No. 2058 of 2014** in which he was convicted for the offence of being in possession of Alcoholic drink that does not confirm to the Alcoholic Drinks Control Act No. 4 of 2010 contrary to **Section 27(1)(b)** of the **Alcoholic Drinks Act of 2010**.
3. Learned counsel Mr. Njau urged on behalf of the applicant, that the applicant be admitted to bond pending hearing and determination of **Cr. Appeal Case No. 57 of 2014**. He relied on his affidavit dated 23rd May 2014. The applicant and seven others were charged on 14th May 2014 at Kibera law courts with the offence of being in possession of 12 bottles of chang'aa, contrary to the stated provisions of the Alcoholic Drinks. The applicant entered a plea of guilty and was sentenced to serve six months imprisonment without option of fine.
4. Mr. Njau argues that the applicant did not understand that the charge was drinking and not possession and that he offered no mitigation out of ignorance. He urged that the applicant is an aged person with a family and that he has instructed him to abide by any orders that the court may grant.
5. In response, Miss Wario learned state counsel opposed the application on grounds that the sentence passed was very lenient. That according to **Section 27(4)** of the **Alcoholic Drinks Act of 2010**, a person who is convicted under this section shall be liable to a fine not exceeding Kshs.2 million or to a period of imprisonment not exceeding 5 years or both. Given the circumstances of the case it is her humble opinion that the sentence of the court was very lenient. She submitted that the court record showed that there was interpretation and that the applicant understood the charge against him and pleaded guilty thereto. She therefore urged the court to dismiss the appeal.
6. I have perused the lower court record and find that it is unclear on the manner in which the particulars of the charge were explained to the applicant. I also note that no facts were stated or read to him and those referred to in the charge sheet were too scanty to enable him appreciate the ingredients of the charge he faced. The record also does not indicate whether the absence of prior record on the part of the applicant was considered in sentencing him. The application is therefore allowed.

7. The applicant in Cr. App 157 of 2014 is released on a cash bail of Kshs.20,000/= pending the hearing of the appeal.

SIGNED DATED and DELIVERED in open court this **24th day of July 2014.**

L. A. ACHODE

JUDGE