



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 65 OF 2014**

**MARY KATISYA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Mary Katisya was charged with two counts of selling alcoholic drinks without a licence contrary to section 7 (1) (b) of the Alcoholic Drinks Control Act No.4 of 2010 as read with section 62 of the same Act.

On 27<sup>th</sup> May 2014 the Appellant was convicted of the two counts on her own plea of guilty and sentenced to a fine of Ksh.50, 000 on each count, in default, to serve two years imprisonment.

The Appellant was aggrieved by the conviction and sentence and therefore filed this appeal. The Appellant relied on the following issues:

- a. **That the learned senior magistrate erred in law and facts in convicting and sentencing the appellant when the charges and its particulars were not clearly explained to the appellant in Kikamba language which the appellant understood and thereby gave rise to a miscarriage of justice.**
- b. **That the learned senior principal magistrate erred in law and facts in convicting and sentencing the appellant by failing to ascertain the language the appellant understood.**
- c. **The learned senior principal magistrate erred in law and facts by convicting and sentencing the appellant when the plea was not unequivocal.**
- d. **That the learned senior principal magistrate erred in law and facts by hurriedly convicting and sentencing the appellant when the appellant did not fully understand and appreciate the charge and its particulars.**
- e. **That the learned senior principal magistrate erred in law and facts by convicting and sentencing the appellant on two counts which were similar and which in law did not amount to separate offences and thereby occasioned prejudice and injustice to the appellant.**
- f. **That the learned senior principal magistrate erred in law and facts in disregarding the principles of sentencing and thus disregarded the mitigation and imposed very severe and**

**excessive harsh sentence on the appellant having regard to the nature of the offence and the fact that the appellant was a visitor in Meru and elderly.**

**g. That the conviction and sentence imposed on the appellant was irregular and against the due process of the law.**

The Appellant therefore prays that the conviction be quashed and sentence set aside. The Appellant was represented by Mr. Kigunda who reiterated the above grounds. On ground 5 he urged that there was duplicity of the charges

The appeal was opposed. Mr. Kariuki, Learned State Counsel contended that the charge was read to the appellant in Kiswahili, that she pleaded guilty, that further the facts were read to her and she responded by saying that the same were correct. In mitigation she pleaded for leniency.

Mr. Kigunda on the other hand submitted that the plea of guilty entered by the appellant was not unequivocal and that there was duplicity of the charge as the appellant was charged with two similar counts under the same section.

I have carefully perused the record of the proceedings in the lower court and submissions of counsel. The charges were indeed read to the accused person in Kiswahili, a language which as indicated in the proceedings, the accused understood. The facts were also read to the appellant and she admitted that they were true. At that stage the appellant never complained that she did not understand Kiswahili. She even prayed for leniency. I am satisfied that the appellant understood the language of the court and the plea was unequivocal.

The accused was charged with two counts, namely selling alcoholic drinks without a licence contrary to section 7 (1) (b) of the alcoholic drinks control Act No.4 of 2010 as read with section 62 of the same Act and sentenced to a fine of Kshs.50,000/- on each count and in default, she was ordered to serve two years imprisonment.

I am in agreement with Counsel for the appellant that the appellant was charged with two similar counts under the same section. The offence was committed on same day at same place and similar amount of alcohol. The charges amounted to duplicity of and was that prejudicial to the appellant. In my view the appellant ought to have been charged with one count.

In the end result, I find that the conviction and sentence entered against the Appellant was improper. I have seen the section under which the appellant was charged. Apart from the duplicity the charge was proper. I therefore quash the 2<sup>nd</sup> charge and set aside the sentence there on. However, I sustain count 1.

The appellant also complains about the severity of the sentence. Section 62 of the Act provides a general penalty for all offences for which no specific penalty is provided. The penalty is a fine not exceeding Ksh.500, 000/- or imprisonment for a term not exceeding 3 years or both. In the instant case, the appellant was treated as a first offender and in my view 3 liters of changaa could not attract a fine of Ksh.50, 000 in default 12 months imprisonment. The sentence was harsh and excessive. The appellant has already served 5 months imprisonment. On count 1 I will sentence the appellant to the 5 months period already served and order that she be released forthwith unless otherwise lawfully held.

**DATED SIGNED AND DELIVERED THIS 21<sup>st</sup> DAY NOVEMBER 2014**

**R. P .V. WENDOH**

**JUDGE**

.....**For Appellant**

.....**For State**

.....**Court Assistant**

.....**Appellant**