

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CR. REVISION NO. 10 OF 2013

(Arising from Bomet SPM Criminal Case No. 704 of 2013)

GEOFFREY KIBET ROTICH APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING ON REVISION

On 1st August, 2013, **Geoffrey Kibet Rotich**, hereinafter referred to as the Applicant wrote to this court to exercise its supervisory power of revision and interfere with the decision of the Senior Principal Magistrate's Court, **Bomet, vide Bomet S.P.M.C.CR. Case No. 704 of 2013. R=vs= Geoffrey Kibet Rotich.** In the aforesaid letter, the applicant listed the following grounds in support of the application.

“ 1. That the learned trial erred both in law and in fact in conducting the proceedings in language that the appellant did not and could not understand.

2. That the learned trial magistrate erred in both law and in fact in failing to take legal proceedings conducting precedent to plea taking by failing to inquire the language the accused understand.

3. That the learned trial magistrate erred in sentencing the appellant to serve 7 months and did not address her mind the principles of sentencing by failing to take into account the appellant is the only bread winner of the family, first offender and was remorseful therefore to have called for social inquiry report before sentencing.

4. That the learned trial magistrate erred in law by handing down a harsh sentence of 7 months without giving him an option of a fine or a non custodian sentence having in mind the accused person was a first offender.”

I have carefully perused the aforesaid proceedings and it is apparent that the applicant appeared before the learned Senior Principal Magistrate and pleaded guilty to a charge of Manufacturing alcoholic drinks without a licence contrary to **Section 7(1)** of the **Alcoholic Drinks Control Act No. 4 of 2010**. He was sentenced to serve seven (7) months imprisonment. The decision must have provoked the applicant to apply for review. A critical examination of the grounds get out on the face of the letter will reveal that the applicant has arguable grounds of appeal. The applicant is challenging both the order on conviction and sentence.

Having come to the conclusion that the applicant has a right of appeal in the circumstances of this revision, the court must determine whether it has a competent application for revision before it. This court recognizes the fact that this its the revisionary power is limited in some respects. A reading of **Section 364(5)** of the **Criminal Procedure Code** will reveal that this court is not permitted to entertain an application for review from applicant who has a right of appeal and who has failed to exercise that right of appeal. This is what happened in this case. The applicant personally approached the court to interfere with the trial court's decision through revision instead of him filing an appeal. If I accede to the Applicant's request, I would be breaching the express Provisions of **Section 364(5)** of the **Criminal Procedure Code**. For the above reasons, I find the application to be improperly and incompetently before this court. It is ordered struck out and dismissed.

Dated, signed and delivered this 6th day of August, 2013

J.K. SERGON

JUDGE