



**REPUBLIC OF KENYA**

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

**CR. REVISION NO. 9 OF 2013**

**(Arising from Sotik SRM Criminal Case No. 1056 of 2013)**

CAROLINE TUM ..... APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

**RULING ON REVISION**

Pursuant to the letter of J.K. Rono & Co. Advocates dated 1st August, 2013 addressed to this court, I proceeded to exercise this court's revisionary power under **Section 363** of the **Criminal Procedure Code** to peruse the proceedings relating to **Sotik S.R.M.C.Cr. Case no. 1056 of 2013 R=vs=Caroline Tum**. My perusal revealed that Caroline Tum, hereinafter referred to as the Applicant, pleaded guilty to a charge of two counts. In count I, the applicant was accused of being in possession of Changaa contrary to **Section 27(1)(b)** as read with **Section 4** of **Alcoholic Drinks Control Act No. 4 of 2010**. In count II, the applicant faced a charge of being in possession of changaa packed in unauthorized container contrary to **Section 4** of the **Alcoholic Drinks Control Act No. 4 of 2010**. The trial Resident Magistrate convicted the applicant in both counts and sentenced her to pay a fine of Kshs.15,000/= in default to serve six months imprisonment on each count. The Applicant's advocate has now asked this court to review both the order on conviction and the sentence. The learned advocate in his letter raised the following grounds:

“ a) **The trial magistrate erred in law and fact in entering a conviction whereas the facts of the charge were not read to the accused person.**

b) **The statement and the particulars of the charge do not explain whether a substance known as changaa is an alcoholic drink in terms of the charge hence there was an ambiguity in the charge.**

c) **The particulars in count II of the charge did not explain what unauthorized containers were or what type of container the accused packed the changaa”**

In my estimation, the applicant is challenging the conviction to be equivocal. That in my view is a good ground for appeal, therefore the applicant undoubtedly has a right of appeal.

The question which I must grapple with is whether I have a competent application for revision before this court. It is obvious that the firm of J.K. Rono & Co. Advocates wrote the letter dated 1st August, 2013, on behalf of the Applicant. The law under **Section 364(5)** of the **Criminal Procedure Code** does not permit an aggrieved person with a right of appeal and who has opted not to file an appeal to personally or through counsel to approach the court to exercise its power of revision. That is what happened in this case. Instead of the applicant filing an appeal, he opted to apply for revision. That is not permitted by law. There is no competent application for revision before this court hence this revision must be rejected. Consequently, this revision is ordered struck out.

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

**J.K. SERGON**

**JUDGE**