

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL REVISION CASE NO. 10 OF 2013

JOSEPH OTIENO APPLICANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

This is a request for review of sentence by Joseph Otieno who was the accused in Butali Principal Magistrate's Court Criminal case No. 437 of 2013. He was found with 90 litres of chang'aa produce. He pleaded guilty to the charge. He was sentenced to pay a fine of Kshs.100,000/= or in default to serve 2 years imprisonment for selling chang'aa contrary to Section 32 (1) as read with Section 2A of the Alcoholic Drinks Control Act No. 4 of 2010.

On the directions of this court, his counsel Mr. Onyango addressed the court. The prosecuting counsel Ms Opiyo also addressed the court.

The accused was a first offender. The sentence imposed was lawful. However, from the record of the proceedings, the learned magistrate did not take into account the mitigation of the accused. In my view therefore, the sentence calls for review under Section 362 of the Criminal Procedure Code (Cap. 75). I will therefore exercise this court's discretion in revision.

Considering the facts and circumstances of the case, I set aside the sentence of the subordinate court. The accused is now sentenced to pay a fine of Kshs.10,000/= or in default to serve six (6) months imprisonment, from the date he was sentenced by the subordinate court.

It is so ordered.

Dated and delivered at Kakamega this 17th day of October, 2013

George Dulu

JUDGE