



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 119 of 2007**

**DANIEL KURIA MACHARIA .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(From the original conviction and sentence in Criminal Case No. 1126 of 2007 of the Principal Magistrate's Court at Thika by F. Nyakundi - Senior Resident Magistrate)**

**JUDGEMENT**

The appellant was charged with being in possession of traditional liquor contrary to section 25(1) of Cap 122 Laws of Kenya. It is alleged that on 4<sup>th</sup> day of March 2007 at Kiganjo estate in Thika District, he was found in possession of traditional liquor (miti ni dawa) to wit 90 litres for sale without a licence or permit. He pleaded guilty and he was fined Kshs.50,000/= in default to serve 12 months imprisonment. The appellant is aggrieved by the decision of the trial court against sentence only. It is the contention of the appellant that the sentence meted out is against the written laws of Kenya since section 25(4) of Cap 122, which he was convicted provides for a sentence of Kshs.6,000/= or imprisonment of 6 months. And that the trial court misdirected itself when she imposed a fine of Kshs.50,000/= in default 12 months imprisonment. Section 25(1) states as follows:

25(1) Any person who, not being the holder of the appropriate licence or temporary licence, manufactures for sale, sells or has in his possession for sale any traditional liquor shall be guilty of an offence.

(4) A person who is guilty of an offence under this section shall be liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding six months or to both.

It is therefore clear that the sentence imposed by the trial court is outrightly illegal and without jurisdiction. Consequently the sentence imposed by the trial court is set aside. I order the appellant to pay a fine of Kshs.3,000/= in default serve 3 months imprisonment. In the premises, I order that the sum paid by the appellant be refunded to him less the sum of Kshs.3,000/=. Orders accordingly.

Dated, signed and delivered at Nairobi this 14<sup>th</sup> day of January 2010.

**M. WARSAME**

**JUDGE**