

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 1 of 2007

**(From original conviction and sentence of the Chief magistrate's court at Nakuru in
criminal case No. 124 of 2007 – B. Atiang [R.M.]**

REPUBLIC.....RESPONDENT

VERSUS

HELLEN KOSGEI.....APPELLANT

JUDGMENT

The appellant, Hellen Kosgei was charged with being in possession of traditional liquor for sale without a permit contrary to Section 25(1) of the Traditional Liquor Act (Cap 122 of the Laws of Kenya

The particulars of the offence were that on the 7th January 2007 at about 1.00 p.m. at Baruti Estate in Nakuru district, the appellant was found in possession of 300 litres of busaa without a permit. When the appellant was arraigned before the trial magistrate's court, she pleaded guilty to the charge. She was sentenced to serve two months imprisonment without an option of a fine. The appellant was aggrieved by her conviction and sentence and has appealed to this court.

The main ground of appeal by the appellant was that she was convicted on a plea of guilty that was equivocal. Mr. Koech for the State conceded to the appeal and submitted that the plea of guilty recorded by the trial magistrate was not in accordance with the rules. Mr. Oira for the accused naturally had nothing to add in view of the concession of the appeal by the State. I have perused the proceedings of the trial magistrate who recorded the plea of guilty and subsequently thereafter convicted the appellant on the said plea of guilty. It is clear that the said plea of guilty was not recorded in accordance with the provisions of **Section 207 of the Criminal Procedure Code** and the directions of the Court of Appeal in the case of **Adan –vs- Republic [1973] E.A. 445**. The facts that constitute the offence were not read to the appellant to confirm whether they were correct or not before the appellant was convicted on her own plea of guilty. It is clear that the said plea of guilty was not unequivocal.

In the circumstances therefore, the appeal filed by the appellant is hereby allowed, her conviction is quashed and the sentence of two months imprisonment imposed is hereby set aside. In view of the nature of the offence that the accused was convicted of and in view of the period that she has already been in prison, it would not serve the interest and the ends of justice if the appellant is retried. The appellant is ordered discharged. She is set at liberty and ordered released from prison unless otherwise lawfully held.

DATED at NAKURU this 18th day of January 2007.

L. KIMARU

JUDGE