



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

**Misc Crim Appli 12 of 2006**

**SUSAN WANJIKU MUTAI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**ORDER ON REVISION**

The applicant, Susan Wanjiku Mutai, was charged with being in possession of **Chang'aa** contrary to **Section 3(1) as read with Section 4(1) on the Chang'aa Prohibition Act**. The particulars of the offence were that on the 4<sup>th</sup> of August, 2006, at Brooke village, Kericho District, the applicant was found in possession of 26 litres of Chang'aa in contravention of the said Act. When the applicant was arraigned before court she pleaded guilty to the charge and was sentenced to serve four (4) months imprisonment without an option of fine. The applicant was aggrieved by the said decision of the trial magistrate in sentencing her and has asked this court to exercise its powers under **Section 362 of the Criminal Procedure Code** to determine the legality of the said sentence.

I have considered the application of revision before me. **Section 4(1) of the Chang'aa Prohibition Act** provides that a person who is found guilty of being in possession of Chang'aa shall be liable to be fined a sum not exceeding Ksh.10,000/= or in default two (2) years imprisonment or both such fine and imprisonment. In my considered opinion, in view of the amount of Chang'aa that the applicant was found in possession of, the trial magistrate was justified in sentencing her to serve a term in prison. However the law required that the applicant be sentenced to pay a fine first before the option of imprisonment was exercised. There is no evidence that the applicant was a repeat offender. I will therefore exercise my powers of revision as provided by **Section 362 of the Criminal Procedure Code** and commute the sentence of the applicant to the period already served.

The applicant is therefore ordered set at liberty and released from prison unless otherwise lawfully held.

It is so ordered.

**DATED at NAKURU this 6<sup>th</sup> November, 2006**

**L. KIMARU**

**JUDGE**