

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
Criminal Appeal 7 of 2005

(From Original sentence and in Criminal Case No. 452 of 2004 of the Resident Magistrate's Court at Wundanyi)
ORIGINAL CASE NO. 452/2004

JUSTINE MWAKALE..... APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of being in possession of chang'aa contrary to section 3(1) as read with Section 4(2) of the Chang'aa Prohibition Act No. 9 of 1980. The particulars of the offence were that on 30th day of December 2004 at Mwatate Location in Taita- Taveta District within Coast Province the Appellant was found in possession of 200 millilitres of chang'aa.

Upon conviction of his own plea of guilty the appellant was sentenced to two years imprisonment. This is because the probation officer did not recommend a non-custodial sentence as the appellant is a habitual brewer. The prosecution however stated that he was a first offender.

Given the amount of the prohibited brew the appellant was found with and the fact that he has been in prison since 7th January 2005 I think he has been punished enough. In the circumstances,I reduce his sentence to the extent that will secure his immediate release and order that the Appellant be released forthwith unless otherwise lawfully held.

DATED and delivered this 18th day of October 2005.

D. K. MARAGA
JUDGE