

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 310 OF 2003

(From Original Conviction and Sentence in Criminal Case No.
1330 of 2003 of the Resident Magistrate's Court at Makindu, R. K.
Mibei Esq. on 21.11.2003

MUTUA MUSYOKI MULU :::::::::::::::::::: APPELLANT

VERSUS

REPUBLIC :::::::::::::::::::: RESPONDENT

J U D G E M E N T

The appellant was arraigned before the Resident Magistrate's Court Makindu on 21.11.2003 charged with offence of being in possession of traditional liquor C/sec. 25 (1) of the Traditional Liquor Act Cap 122 Laws of Kenya. He was alleged to have been found in possession of 245 litres of traditional liquor Karubu for sale without a permit. The appellant pleaded guilty to the offence and was convicted on his own plea of guilty. He was then sentenced to 12 months imprisonment. He is dissatisfied with the sentence. From the memorandum of appeal it is apparent that he is dissatisfied with the sentence claiming that it is excessive in the circumstances. It seems he has no problem with the conviction.

The plea was read to the appellant in the English/Kikamba languages to which he pleaded guilty. Facts were read out to him and the said karubu produced as an exhibit. Being the first day of plea I do not believe that a government chemist report would have been available. Besides the appellant has no quarrel with the plea.

He did not waste the court's time and in mitigation he said that he had young children to care for. The Magistrate gave a deterrent sentence but I do find that the court should have considered getting a home report from the Community Service Officer or Probation Officer. Alternatively the court should have considered a non custodial sentence in the form of a fine. The appellant was charged under S. 25 (1) of the Traditional Liquor Act. The sentence provided under S. 25 (1) is a fine not exceeding 6,000/- or 6 months imprisonment or to both. The Magistrate therefore gave an` illegal sentence not provided by law. The appellant has been in prison as from 21.11.2003 a period of 3 months. The court will set aside the illegal sentence of 12 months imprisonment and substitute it with the period that the appellant has served which is 3 months imprisonment and he is set at liberty forthwith unless he is otherwise lawfully held.

Dated, read and delivered at Machakos this

day of 2004.

R. V. WENDOH

JUDGE