



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**REVISION CASE NO.56 OF 2003**

**JOSEPH NATWAT & 10 OTHERS**

**VERSUS**

**REPUBLIC**

The applicants pleaded guilty to a charge of being in possession of traditional liquor contrary to section 25(1) as read with section 25(4) of the Traditional Liquor Act. The particulars are that on the 25th day of September, 2003, at Nambaone village, Nasusi Sublocation, Maeni Location, Bungoma District within Western Province were jointly found being in possession of traditional liquor, busaa to wit fifty five (55) litres without a permit from the Authority in contravention of the Act.

They were each convicted and sentenced to pay a fine of Ksh.5,000/= and in default to serve 3 months imprisonment. The senior state counsel referred this matter to this Court to consider the Judgment on revision under section 362 of the Criminal Procedure Code.

The records availed to this Court shows that the applicants pleaded guilty to the charge without the facts being read. It is clear that the prosecutor did not read the facts as required under the Provisions of the Criminal Procedure code. She only stated as follows:-

Facts as per charge sheet.” In the circumstances since the every ingredient of the charge had not been explained to the accused persons, the plea was not sufficient to amount to a plea of guilty.

Consequently, there was no competent plea to support a conviction.

The record also reveals that the accused persons past records were not provided to the trial Court before sentence. The accused person’s mitigated but the trial magistrate did not note that he considered their mitigations. Consequently, it is clear that the sentencing magistrate did not take into account relevant material factors before sentencing the accused persons. This is a great misdirection which led to the trial magistrate tendering a sentence of high fines of Ksh.5000/=. The law under liquor Act sets a maximum fine of Ksh.6000/=. The trial magistrate did not justify a fine of Ksh.5000/=.

In the end, I think this is a proper case which I should exercise my discretion on revision in favour of the applicants.

The upshot therefore is that the conviction is quashed and the sentence set aside.

**Dated this 15th day of October, 2004.**

**J. K. SERGON**

**JUDGE**