

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

APPELLATE SIDE

HIGH COURT CRIMINAL APPEAL 165 OF 2004

(From Original Conviction(s) and Sentence(s) in Criminal Case No 1726 of 2004 of

the Resident Magistrate's Court at Makindu R.K. Mibei (Es q.) on 2/11/04)

CATHERINE NDINDI PETER ::: APPELLANT

VERSUS

REPUBLIC ::: RESPONDENT

J U D G E M E N T

The appellant Morris Kituku was convicted of the offence of possessing Chang'aa Contrary to Section 3 (1) of the Chang'aa Prohibition Act Cap 70 Laws of Kenya. He was sentenced to 19 months in jail. He is aggrieved by the sentence and hence this appeal.

The state conceded the appeal and asked court to consider other options of sentences. The appellant pleaded guilty to the offence. There were no records of previous convictions. The amount of Chang'aa that the appellant possessed was 1/2 litre. Under Section 4 (1) Chang'aa Prohibition Act, the penalty for such offence is a fine of Kshs. 10,000/= or jail term not exceeding two years. I do agree that the sentence in the circumstances was manifestly harsh and excessive. The magistrate should have considered fining the appellant or sending him to perform Community Service. The appellant has been in jail since 14/6/04 which is excessive already. The court sets aside the sentence of 19 months imprisonment and substitutes it with the jail term so far served. The appellant is set at liberty forthwith unless otherwise lawfully held.

Dated at Machakos this 16th day of December 2004

**R.V. WENDOH
JUDGE**