



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nyambura (Criminal Revision E058 of 2025)
[2025] KEHC 10771 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL REVISION E058 OF 2025**

**PN GICHOHI, J
JULY 22, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

ANNE NYAMBURA RESPONDENT

RULING

1. Vide a Revision Application dated 17th April 2025 and filed on 23rd April 2025, and relying on Section 362 and 364 of the [Criminal Procedure Code](#), the Applicant prays that :-
 1. There be a stay of execution of the court orders issued on 16th April 2025 directing release of the unopened alcoholic drinks to the accused person.
 2. This Court be pleased to call for the record in Nakuru Chief Magistrate’s Court Criminal Case No. E086 of 2025 and review, vacate and /or set aside the order of the release of the unopened alcoholic drinks as ordered by the Honourable magistrate.
 3. Consequent to the above , this Honourable Court orders for the destruction of the said exhibits.
 4. Any other orders/ reliefs that this Court may deem fit and just and proper to grant in the circumstances.
2. The reasons given for the above prayers are that:-The excise duty of the said alcoholic drinks remains unpaid.It is not known if the said alcoholic drinks are safe for human consumption being the manufacture and sale was done following the requisite process.Once returned to the accused , it is likely to be taken back to the market , thus placing unsuspecting Kenyans at risk.The returning of the said exhibits to the accused is likely to send a wrong message to the public and encourage other would be offenders to get away with such crimes.The application is made in good faith.



3. The Respondent was duly served but did not respond to the application and did not attend this Court.

Analysis.

4. This Court has called for the lower court file and a perusal of the trial Court's record shows that the Respondent herein was charged before the trial court with two counts.

5. In Count I, the accused was charged with offence of being in possession of excisable goods not affixed with excise stamps contrary to section 28 (1) as read with Section 28 (7) of Excise Duty Act 2015.

6. The particulars were that that on 14th day of April 2025 at around 1130 hours at Mwalimu Wines and Spirit situated at Railways stage area in Nakuru County, she was found in possession of alcoholic drinks not affixed with excise stamps.

7. The above were listed as :-Power Gin- 101 pieces of 250 ML.Power Gin- 1 piece of ½ 250 ML.Spark Vodka -72 pieces of 250 ML.Spark Vodka - 40 pieces of 250 ML.Golden Gin -71 piece of 250 ML.Best Gin - 8 pieces of 250 ML.Best Gin – I pieces of ½ 250 ML.

8. In Count II, she was charged with offence of selling Alcoholic Drinks without Liquor Licence contrary to section 7 (1) (b) as read with section 62 of Alcoholic Drinks Control Act No. 4 of 2010 Laws of Kenya.

9. The particulars were that on 14th day of April 2025 at around 1130 hours at Mwalimu Wines and Spirit situated at Railways stage area in Nakuru County, she was found selling alcoholic drinks without Liquor Licence for year 2025.

10. These were listed as:-Kibao - 1 piece of ½ 250 ML.Kibao - 1 piece of 4 250 ML.Origin -2 pieces of ¼ & ½ 250 ML.Kenya Cane- 1 piece of ½ 250 ML.Dallas - 1 piece of ¾ 250 ML.General Meaking - 1 piece of ½ 250 ML.Kenya King - 1 piece of ½ 250 ML.White Pearl - 1 piece of ½ 250 ML.Captain Morgan - I piece of ¾ 250 ML.County - I piece of ½ 250 ML.Chrome - I piece of ½ 250 ML.Konyagi - I piece of ½ 250 ML.

11. The accused person pleaded guilty to Count I but denied Count II and promptly, the prosecution counsel withdrew the said count (Count II) under section 87 (a) of the Criminal Procedure Code. .

12. Regarding Count I, the accused person admitted the facts as read by the Prosecution Counsel and she was found guilty and convicted accordingly. She was fined Kshs. 10,000/- in default to serve one Moth imprisonment.

13. The Court then made the following orders:-

“ The unopened drinks be returned to the accused person and the opened ones to be destroyed under the supervision of the OCS Kaptebwa police station . A certificate of destruction be filed.”

14. The accused person paid the fine and was duly released. The prosecution is only aggrieved by the order of release of the unopened drinks.

Determination

15. The issue for determination therefore , is the application herein is merited for revision orders.



16. It is a fact that High Court has supervisory jurisdiction over the subordinate courts and has powers under Section 362 of the *Criminal Procedure Code* to :-

“...call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

17. Further Section 364 of the *Criminal Procedure Code* provides that:-

- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
 - (c) in proceedings under section 203 or 296(2) of the Panel Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.”
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

18. In this case, it is clear that the accused person unequivocally admitted having been found in possession of the said alcoholic drinks which have not been affixed with excise duty stamps as required by law. That is an offence contrary Section 28 of *Excise Duty Act* 2015 and therefore, all the said exhibits in regard to Count I ought to have been destroyed to avoid sale or consumption whatsoever.

19. Releasing the said unopened drinks to the accused is not only a slap on the face of the law but also an illegality. There is nothing on record also to show that “opened drinks” the subject of Count 1 were ever destroyed as ordered and a certificate filed to that effect.



20. Be that as it may, the court makes the following orders:-

1. The Order made on 16th April 2025 by Hon. P. Nyota (SRM) for release of the unopened drinks to the accused person be and is hereby set aside .
2. The said exhibits be destroyed forthwith under the supervision officers from Kenya Revenue Authority.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF JULY , 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kihara for Applicant

N/A for Respondent

Ngeno- Court Assistant

