



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gatwiri v Republic (Criminal Appeal E018 of 2023)  
[2024] KEHC 945 (KLR) (7 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 945 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL APPEAL E018 OF 2023  
LM NJUGUNA, J  
FEBRUARY 7, 2024**

**BETWEEN**

**FRIDA GATWIRI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising from the decision of Hon. L. Ambasi CM in the Chief Magistrate's  
Court at Embu Criminal Case No. E425 of 2023 delivered on 21st June 2023)*

**JUDGMENT**

1. Through a petition of appeal dated 04<sup>th</sup> July 2023, the appellant seeks for orders that the appeal be allowed, the sentence meted out to the appellant be reduced to a lenient non-custodial sentence or in the alternative, the court to revise the sentence downwards. The appeal is premised on grounds that:
  - a. The learned trial magistrate erred in law and fact by meting out excessive sentence under the circumstances;
  - b. The learned magistrate misdirected herself in law and fact by failing to consider that the appellant was a first offender and thus deserved a lenient sentence; and
  - c. The learned magistrate erred in law and fact by convicting the appellant on the second count while the appellant was awaiting to be issued with the new year's licence.
2. The appellant was charged with the offence of operating a bar without licence contrary to section 7(1) (b) as read together with section 62 of the *Alcoholic Drinks Control Act* No. 4 of 2010. The particulars of the offence are that on 20<sup>th</sup> June 2023 at around 1830Hrs at Mbuvari market in Embu North sub-county in Embu County, the appellant was found operating a bar business namely Ngungiri bar without alcoholic liquor licence for the year 2023. The alternative count was failing to display the alcoholic drinks licence contrary to section 20(1) of the Alcoholic Drinks (Control) Act No. 4 of 2010.



The particulars of the alternative charge are that on 20<sup>th</sup> June 2023 at around 1830Hrs at Ngungiri bar in Mbuvari location in Embu North sub-county in Embu County, the appellant, being the counter attendant, failed to display the alcoholic drinks licence for the year 2023

3. When she was arraigned, the appellant pleaded guilty and a plea of guilty was duly entered. The facts were read out to her and she affirmed her guilty plea. She was convicted on her own guilty plea and sentenced to a fine of Kshs. 200,000/= or in default, 6 months imprisonment.
4. This appeal was canvassed by way of written submissions.
5. It was the appellant's submission that she was merely a bar maid being paid very low wages and that she could by no means afford the fine imposed by the trial court. That at the trial, she pleaded guilty in order to save the court's time. That acquiring a liquor licence takes time and operators often use the expired licences as they await issuance of the renewal licences, and the trial court should have considered this procedural flaw in mitigation as it was not her fault.
6. The respondent stated that under section 384 of the Criminal procedure code, the appellant can only appeal on the extent or legality of the sentence as she pleaded guilty at the trial. It relied on the provisions of sections 7(1)(b) and 62 of the Alcoholic Drinks (Control) Act and the cases of Anthony Muthonga Munene v. Republic (2022) eKLR, Olel v. Republic (1989) KLR 444 and Shadrack Kipkoech Kogo v. Republic, Kisii HCCRA No. 253 of 2003. It was its argument that the trial magistrate did not impose the maximum prescribed sentence according to the relevant law and that the sentence was not illegal or excessive. It urged the court to uphold the findings of the trial court on the sentence.
7. The issue for determination herein is whether the sentence imposed by the trial court should be reduced.
8. The appellant pleaded guilty at the trial and she was convicted on her own guilty plea. She was sentenced to pay a fine of Kshs. 200,000/= and in default to serve 6 months imprisonment. In her submissions, the appellant stated that she was only a bar maid working at the named bar where she earns less than Kshs. 10,000/= per month. She also stated that she was yet to obtain the renewed liquor licence because the same was still being processed and that liquor vendors usually operate with expired licences due to the processing delays. This averment by the appellant notwithstanding, does not change the fact that the licence was required for as long as she intended to run the business.
9. The sentence imposed by the trial magistrate fell within the limits set in the Act, hence the same was not excessive. Section 62 of the *Alcoholic Drinks Control Act* provides for the penalty for offences under the same act as follows:

“ Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both”
10. When the appellant was convicted on her own guilty plea, it meant that she could only appeal on the extent and legality of the sentence imposed. Section 382 of the Criminal Procedure Code provides:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”



As far as its extent, it is my view that the sentence was not excessive considering the limits prescribed by the Act. As to the legality of the sentence, the same cannot be termed as illegal because it was based on the relevant laws and the trial magistrate applied her discretion.

11. In the end, I find no reason to interfere with the decision of the trial court on sentence. This appeal lacks merit and it is hereby dismissed.

12. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 07<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellant

.....for the State

