



**Bii v Republic (Criminal Revision E116 of 2023)  
[2023] KEHC 23833 (KLR) (19 October 2023) (Revision)**

Neutral citation: [2023] KEHC 23833 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL REVISION E116 OF 2023  
JK SERGON, J  
OCTOBER 19, 2023**

**BETWEEN**

**CHARLES KIBET BII ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**REVISION**

1. Pursuant to the Letter dated October 5, 2023 written to the Court, the proceedings relating to Kericho CMCCRC No E2643 of 2023 was placed before this court pursuant to the Provisions of Section 362 and 364 of the *Criminal Procedure Code*.
2. I have perused the record and it is apparent that Charles Kibet Bii, the applicant herein was arraigned before the Chief Magistrate’s Court whereof he pleaded guilty to the offence of being in Possession of Alcoholic Drinks without a licence Contrary to Section 27 (1) (b) as red with Section 27 (4) of the *Alcoholic Drinks Control Act* No 4 of 2010 Laws of Kenya.
3. The particulars of the offence are that on the 1<sup>st</sup> day of September, 2023 at 1900 hrs at Annex Area Township Location in Kericho East Sub-Location within Kericho County was found being in Possession of Alcoholic Drinks namely Busaa to wit 50 litres without a licence. The Applicant was subsequently convicted on his own plea of guilty and sentenced to serve 6 months imprisonment.
4. Under Section 362 of the *Criminal Procedure Code*, this court is given 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.
5. Having perused the Proceedings placed before this Court, it is apparent that the offence the applicant was convicted for attracts a fine of Kshs 2,000,000/= or a term of 5 years imprisonment or both.



6. In this case, the Applicant was not given an option to pay a fine. Where the Law gives an option of a fine, the sentencing Court is bound to first give the convict an option of a fine instead of straightaway pronouncing of a prison term.
7. In the circumstances of this case, this Court is entitled in exercise of its revisionary power to interfere with the Order on sentence. I hereby set aside the order sentencing the Accused to serve 6 months imprisonment and substitute it with an Order sentencing the applicant Namely Charles Bii to pay a fine of Kshs 50,000/= in default to serve 3 months imprisonment.

**DATED, SIGNED AND DELIVERED THIS 19<sup>th</sup> DAY OF OCTOBER, 2023.**

.....

**J.K. SERGON**

**JUDGE**

