



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT NYERI

CRIMINAL APPEAL NO. 12 OF 2019

WINROSE NJERU MUNYERI.....APPELLANT

FELIX MURINGO NGUNYI.....APPELLANT

HARRISON MAINA WAMBUI.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(Appeal from the judgment of the Hon.R.Kefa (SRM) delivered on 13/02/2019

in C.M.Criminal Case No.206 of 2019 at Nyeri)

JUDGMENT

1. The appellants, **WinroseNjeruMunyeri, Felix MuringoNgunyi and Harrison MainaWambui**, were charged with the offence of selling in a food plant without valid medical certificates contrary to **Regulation 15(1)(b)** as readwith **Regulation 17** of the Food Hygiene Regulations under the Food Drugs and Chemical Substances Act Cap.254 Laws of Kenya;

2. The particulars of the charge on are that on the 12/02/2019 at around 15.00hrs at Highway Bar and Restaurant at Kiawara Trading Centre Kieni West Sub-County within Nyeri County the appellants were found selling food without medical certificates;

3. The appellants wereconvicted on their own plea of guilty and were each sentenced to a fine of Kshs.20,000/-; in default each to serve a term of six months imprisonment;

4. Being aggrieved by both the conviction and sentence, the appellants filed a Petition of Appeal on the 19th February, 2019; hereunder is a summary of their grounds of appeal;

(i) The Charge Sheet was defective; the particulars of the offence did not support the Charge;

(ii) The trial court erred in convicting the appellants under provisions of law that did not disclose any offence known in law;

(iii) The trial court erred in sentencing the appellants under provisions of law that do not provide for sentencing;

(iv) The sentence imposed was harsh and excessive in the circumstances.

5. At the hearing of the appeal the appellants were represented by learned counsel Mr.Muhoho whereas Ms.Gicheha appeared for the State; counsel for the appellants highlighted the written submissions whereas the Prosecuting Counsel for the State conceded the appeal; hereunder is a brief summary of the submissions made on behalf of the appellants.

APPELLANTS SUBMISSIONS

6. The appellant submitted that the appeal was just on the sentence as it was excessive and was not provided for in the regulations to Cap 254; that fine imposed of Kshs.20,000/- and a default sentence of six months is not provided for in Regulation 17; the said Regulationprovides for the maximum fine of Kshs.2,000/-; and in defaultto a term of three (3) months imprisonment; he prayed that the

appeal be allowed and prayed that the sentence be set aside;

RESPONDENTS SUBMISSIONS

7. The appeal was not opposed; Counsel conceded the appeal and concurred that the sentence provide for under the provisions of Regulation 17 was a fine of Kshsh.2000/- and a default sentence of three (3) months;

8. The court record reflected that the appellants were 1st offenders with no previous convictions; and submitted that the appellant ought to have been treated likewise; and conceded the appeal on the grounds that the sentence was harsh and excessive; and prayed that the appeal be allowed as it had been conceded;

ISSUES FOR DETERMINATION

9. As the appellant pleaded guilty to the offence their appeal can only be on sentence therefore the only issue framed by this court for determination is whether the sentence was harsh and excessive.

ANALYSIS

10. The appellants stated that they were abandoning the ground of appeal on conviction and submitted that the instant appeal was only on sentence; this court notes from the record that the plea was taken in accordance with the law; the Charge and particulars were read out to the appellant in a language they understood; and the plea as recorded was unequivocal; Counsel relied on the case of **Adan vs Republic (1973) EA 445**.

11. Therefore the convictions for each of the appellants was legal; the sentence meted out to each of the appellants was a fine for Kshs. 20,000/- and in default each appellant to serve a term prison term of six months; both counsel submitted that the sentences imposed were not legal and were found to be harsh and excessive;

12. This court has had the occasion to peruse Regulation 17 which provides for the penalty for the offence of which the appellants were charged with; and the regulation reads as follows;

“17. Offences and penalties

Any person who contravenes the provisions of these Regulations shall be guilty of an offence and liable—

(a) in the case of a first offence, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment; and

(b) in the case of a second or subsequent offence, to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.”

13. It is evident that the trial court acted upon some wrong principle of law and failed to take into account the provisions of the above section when passing sentence; the trial court ought to have taken into consideration the fact that the appellants were first offenders as this had been pointed out to the court by the prosecution; it can therefore be validly concluded that the sentence meted out for such an offence was not provided for in law and was in the circumstances also manifestly harsh and excessive and therefore warrants interference by this court; Refer to the case of **Wanjema v Republic (1971) EA 493**;

14. For the forgoing reasons this court is satisfied that this ground of appeal has merit and it is hereby allowed;

DETERMINATION

15. For those reasons stated above the appeal on sentence is found to be meritorious and it is hereby allowed;

16. The sentence imposed is found not to be legal and is also found to be harsh and excessive; it is hereby set aside and substituted with a fine of Kshs.2000/- for each of the appellants and in default to a term of imprisonment of three (3) months each;

17. The appellant had each paid a fine of Kshs.20,000/- and this court directs that the sum of Kshs.18,000/- be refunded to each appellant.

Orders accordingly.

Dated Delivered and Signed at Nyeri this 13th day of February, 2020.

HON. A. MSHILA

JUDGE.