



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL APPEAL NO. 24 OF 2019

JANET CHEBET.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 2122 of 2019 of the SPM's Court at Bomet – P. ACHIENG - SPM)

JUDGMENT

1. The Appellant was charged with the offence of being in possession of alcohol drinks without a license contrary to Section 27 (1) (b) as read with Section 27 (4) of the Alcoholic Drinks Control Act No. 4 of 2010. She pleaded guilty before Hon. P. Achieng – SPM on 26/8/2019 and was convicted on her own plea. She was subsequently sentenced to serve 3 years' Imprisonment.

2. The Appellant filed the present appeal on 14th October 2019. The Memorandum of appeal filed by Nelson Cheruiyot & Co. Advocates lists three grounds as follows:-

i. THAT, the learned Magistrate erred in Law and in facts by sentencing the appellant to serve three (3) years Imprisonment, a sentence which is exorbitantly long compared with the offence committed.

ii. THAT, the learned Magistrate erred in Law and facts by sentencing the appellant to serve three (3) years without giving her option of fine yet it is provided for by the Act.

iii. THAT, the learned Magistrate erred in Law and facts by sentencing the appellant to serve three (3) years without considering her mitigating fact of asking for forgiveness.

3. From the Memorandum, it is clear that the appeal is against sentence only. Pursuant to the directions given by the court on 14th October 2020, the Appellant filed written submissions dated 19th October 2020 and filed the same date.

4. When the appeal came up for hearing before me on 5th November 2020, Mr. Kenduiwo for the Appellant adopted his written submissions. In summary the Appellant submitted that the sentence of 3 years Imprisonment was exorbitant. That there was no legal requirement that a repeat offender should be given a custodial sentence. Further the Appellant submitted that in giving a custodial sentence, the trial court failed to take into consideration the fact that the Appellant was a mother and that her children needed her. Finally, the Appellant submitted that the trial magistrate did not consider the Appellant's mitigation and in particular that she had sought forgiveness.

5. The Respondents opposed the appeal. In brief oral submissions, Mr. Murithi the Learned Principal Prosecution Counsel submitted that the Appellant pleaded guilty and therefore could only appeal against sentence only. He submitted that the Appellant was a habitual offender who had five criminal records where she was convicted and fined various amounts for similar charges. Counsel submitted that the trial court considered the previous records and that informed the decision to sentence her to 3 years imprisonment.

6. In reply, Mr. Kenduiwo urged the court to consider that the Appellant had asked for forgiveness and that she had been in prison custody for over one year now.

7. Section 27 (4) of the Alcoholic Drinks Control Act No. 4 of 2010 prescribes that ***“A person who contravenes the provisions of this Section commits an offence and shall be liable to a fine not exceeding two million shillings or to Imprisonment for a term not exceeding five years or to both.”***

8. From the above, it is clear that the sentence meted out to the Appellant was lawful. Once convicted, she was liable to either imprisonment, fine or both.

9. With respect to the ground that the sentence was severe, I have looked at the record. The record shows that the prosecution Counsel demonstrated that Appellant was a repeat offender who had been charged convicted and sentenced previously. Counsel stated in mitigation as follows:

“She has previous records on 11th January 2014, the accused was charged with possession of one litre of changaa and 10 litres of busaa. She was fined Ksh.10,000/= in default 4 months imprisonment in Criminal 57/14. On 11th April 2015, in Cr. 331/15 she was charged with possession of 2 litres of changaa and she was convicted and sentenced. In July 2015 in Cr. 659/15 the accused was charged with possession of 20 litres of busaa and was fined Ksh.20,000/= in default 6 months.

On 26th March 2016, she was charged in Cr. 388/16 for possession of 20 litres of changaa. She was fined Ksh.20,000/= in default 6 months imprisonment.

In June 2018, the accused in Cr. 983/18 was charged with 5 litres of changaa and was sentenced to serve 6 months’ imprisonment.”

10. It is important at this point to restate the purposes of sentencing. These are captured in the Judiciary Sentencing Guidelines 2014 as:-

- 1. Retribution: to punish the offender for his/her criminal conduct in a just manner.**
- 2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.**
- 3. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law abiding person.**
- 4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.**
- 5. Community protection: to protect the community by incapacitating the offender.**
- 6. Denunciation: to communicate the community’s condemnation of the criminal conduct.**

These purposes are not exclusive in themselves and their application is dependent on the unique circumstances of each case.

11. In the instant case the Appellant has been shown to be a repeat offender. One of the purposes of sentencing as indicated above is to provide deterrence. It is obvious in this case that the fines imposed on the Appellant had no deterrent effect. I find that she was deserving of imprisonment.

12. I have however considered the submission that the Appellant has served one year in prison. I am persuaded that the one year has served both a deterrent and rehabilitative purpose. She is released from custody to complete the remaining part of her sentence on probation. Any breach of the probation terms shall lead to the Appellant being arrested to serve the remaining part of her sentence in prison.

Judgment delivered, dated and signed at Bomet this 2nd day of December, 2020.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Accused, Defence Counsel Mr. Kenduiwo, Mureithi for the DPP and Kiprotich, Court Assistant.