

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 136 OF 2018

(From original conviction and sentence in Criminal Case No. 329 of 2018 of the PM's Court at Marimanti)

JOHN MUGAMBI MUCEGA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. The applicant herein **JOHN MUGAMBI MUCEGA** was charged with the offence of dealing in an Alcoholic Drink without licence contrary to Section 7(1) (b) as read with Section 62 of the **Alcoholic Drink Control Act No. 4 of 2010** vide **Marimanti Principal Magistrate's Court Criminal Case No. 329 of 2018.**

2. The record of proceedings from the trial court indicates that the applicant pleaded guilty to the offence and was therefore convicted on his own plea of guilty and sentenced to pay a fine of Kshs.140,000/- or serve 2 years imprisonment in default. The particulars of the charge were that he was found selling 140 litres of "**Nguzo**" which is an illicit brew and which were found in 6 20 litre and 2 10 litre jerricans.

3. The applicant has now moved this court for revision of sentence vide a undated Notice of Motion file on 10th September 2018.

4. The applicant is asking this court to review the sentence and consider bonding him a non-custodial sentence on grounds that he has a family and is a bread winner of that family.

5. This court has called for the lower court file for purposes of **Section 362** of the **Criminal Procedure Code** and having gone through the file I am satisfied about the correctness, legality and propriety of the proceedings and findings of the trial court. The trial court meted out a sentence of a fine of 140,000/- or 2 years imprisonment in default of fine. The provisions of **Section 62** of **Alcoholic Drinks Act** provides a penalty of upto 500,000/- or 3 years imprisonment or both. I have looked at the mitigating circumstances taken into consideration by the trial court and it is clear that the illicit brews in the locality had become a menace and hence the need for deterrent sentence. The trial court took into consideration all the relevant factors in the exercise of its discretion in meting out the sentence it handed out to the applicant. I have no basis to interfere with the discretion because I note that the same grounds in this application were raised by the applicant in mitigation.

In the premises this court finds no merit in this application. The same is disallowed. The applicant should use the period he has been given in the correctional facility to change and transform in order to be useful to the society once he serves his sentence so that when he is out he would probably stop his destructive ways by engaging instead on constructive ways to the society.

Dated, signed and delivered at Chuka this 19th day of February, 2019.

R.K. LIMO

JUDGE

19/2/2019

Ruling dated, signed and delivered in the open court in the presence of Momanyi for State and Applicant in person.

R.K. LIMO

JUDGE

19/2/2019