



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**HCCR REV. CASE NO 61 OF 2019**

**REPUBLIC .....DPP**

**VERSUS**

**CECILIA KANANU.....ACCUSED**

**RULING OF REVISION**

1) The accused Cecilia Kananu was charged with the offence of processing alcoholic drinks without a licence contrary to Section 7 (i) as read with Section 62 of the Alcoholic drinks control Act No. 4 of 2010. She pleaded guilty to the charge and was convicted of her own plea of guilt. She was sentenced a fine of Kshs. 40,000/= in default to serve 8 months imprisonment.

2) She has applied by way of a notice of Motion dated 26/06/2019 for her sentence to be revised. She states that she is a widow having 5 children the last born being 6 months.

3) At the hearing of the application, her counsel Mr. Muthomi paraded the five children in court with their aged and frail grandmother and pleaded with the court to pardon the accused.

4) Mr. Gitonga, learned state counsel opposed the application on the basis that the fine of Kshs. 40,000/= was lenient as the maximum fine is Kshs. 500,000/= and/or imprisonment for 3 years.

5) I have on my part looked at the proceedings. The record shows that after the charge was read to the applicant the court did not enter a plea of guilty as required. The prosecution proceeded to produce what is shown to be "40 litres of Muna "Exh 1, whereupon the applicant was convicted of the offence.

6) Two issues arise. The facts that constituted the offence were not read to the applicant. It is a requirement that once an accused has pleaded guilty, the court should first enter a plea of guilt then require the prosecution to read the facts to the accused. The Court is required to ask the accused to admit whether the facts are correct. It is only after an accused has admitted to the facts that the court should proceed to convict the accused *see a decision in Obedi Kilonzo Kavevo V.R [2015] eKLR* .

7) This did not happen in this case.

8) The second issue is the exhibit that was produced. Two questions arise regarding it: -

i. The accused did not admit that the exhibit produced was recovered from her. The record does not show that

ii. There is nothing to show that the said exhibit was alcohol or contained alcoholic substances. A court of law cannot rule that any liquid contains alcohol without a certificate of the Government Chemist.

9) Such Certificate lacking. It is unsafe to hold that the exhibit produced is a substance that if used for preparing an alcoholic substance in terms of the Act. *See Mercy Kendi Kathambi V.R [2014] Eklr and Purity Njambi Njoroge V.r [2017] Eklr*.

10) In view of the foregoing, I find the proceedings that led to the conviction and sentencing of the applicant to have been irregular and cannot stand.

11) In the circumstances, I quash the conviction and set aside the sentence.

12) The applicant is to be set free at liberty unless otherwise lawfully held.

**DATED** and **DELIVERED** at Meru this 14<sup>th</sup> day of February, 2019.

**A. MABEYA**

**JUDGE**