REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. 7 OF 2019

KARIMI MIRITI SABINA …… APPLICANT

Versus

REPUBLIC ……..…….. RESPONDENT

RULING

The holocaust of illicit brew

1. **KARIMI MIRITI SABINA** ("the applicant") was charged with the offence of manufacturing an alcoholic drink without a license contrary to ***Section 7(1) as read with Section 62 of the Alcoholic Drinks Control Act No. 4 of 2010***. She was convicted and sentenced to pay a fine of Kshs. 100,000/- and in default to serve 20 months imprisonment in the **Principal Magistrates Court at Tigania Criminal Case No. 21 of 2019**.

2. She was aggrieved and filed application dated 9th January 2019 where she sought revision of sentence on the ground that the sentence was harsh considering that she is first time offenders. She also argued that she was disadvantaged for she was unrepresented- an aspect the trial court failed to take into account.

ANALYSIS AND DETERMINATION

3. Review is a constitutional right of a convicted person. It entails inter alia revision of subordinate court within the supervisory jurisdiction of the High Court. See article 166(6) and (7) of the Constitution which provides that:-

> **(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.**
>
> **(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.**

4. **Section 362 of the Criminal Procedure Code** also provides that:

> **"The High Court may 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. In revision, the scope of this court's powers to disturb the sentence is circumscribed within limits that were aptly described by Hayanga J in the case of ***Republic v Jagani & another [2001] KLR*** **590** as follows:

> **"A Court on appeal will only interfere with trial court's discretion where the sentence was imposed against legal principles, or where relevant factors were not considered or irrelevant and or extraneous matters considered or normally where the sentence is manifestly excessive in view of the circumstances of the case the Court will interfere. It is not enough in the circumstances of any case that the appellant court feels it would have itself given a more improved sentence than the trial court imposed. … Before this Court reviews sentence imposed by the trial court "this court must be satisfied that their exists to a sufficient extent circumstances entitling it to vary the order of the Court below." Is it shown that she acted upon wrong principle? Overlooked material factors or that the sentence was too excessive in the circumstances?"**

6. I will apply the above test here. The penalty clause for person found to be guilty under **Section 7 of the Alcoholic Drinks Control Act No. 4 of 2010** is **Section 62 of the said Act** which states that:

"Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both."

7. From the foregoing, a fine of Kshs. 100,000 or in default to serve a jail term of 2 years is not excessive or harsh. The sentence was within the permitted parameters and it was not maximum sentence. The only trouble with the proceedings of the trial court is that it did not indicate whether or not it took into account the mitigation that was offered by the accused. This is an error in principle for which the sentence is set aside. I should state that trial court should always consider mitigation offered and expressly state so in the sentence decision. Again, such matters as being first offender or whether non-custodial or non-custodial sentence is appropriate and any other relevant factor should be stated and considered in sentencing to avoid falling into error.

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8. Having stated that, it is this court's turn to impose appropriate sentence. The applicant is a first time offender who according to mitigation has 21 children. I have considered that fact and mitigation offered. I have also considered that illicit brew has brought about a holocaust of the youth as well as the old. It is a public notoriety now that the illicit brew is decimating a whole generation and it is time all efforts are engaged to stop the holocaust. Accordingly, whilst it is necessary to think of rehabilitation of the offender, it is equally important to remember that some cases are served better by deterrent sentence. This case is perfect to impose a deterrent sentence. Accordingly, I sentence the applicant to a fine of Kshs. 100,000 or in default serve a jail term of 2 years. The sentence will run from the time of the original sentence was imposed. It is so ordered.

Dated, signed and delivered in open court this 7th day of March 2019

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F. GIKONYO

JUDGE

In presence of

Namiti for state

Omari for applicant

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F. GIKONYO

JUDGE