



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO. 10 OF 2019

PIUS GICHUNGE 1ST APPLICANT

GEOFFREY MUCHUI 2ND APPLICANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

1. **Pius Gichunge and Geoffrey Muchui** were arraigned before the **Principal Magistrates Court at Tigania Criminal Case No. 592 of 2018** charged with the offence of manufacturing an alcoholic drink contrary to **Section 7 as read with Section 62 of the Alcoholic Drinks Control Act No. 4 of 2010**. They denied the charges. After trial, they were found guilty, convicted and sentenced to pay each a fine of Kshs. 210,000/- and in default to serve 42 months imprisonment.

2. They have now applied for the review of that sentence on the grounds that it was harsh considering that they were first time offenders. That besides, they were disadvantaged for they were unrepresented of which the trial court failed to take into account.

3. **Section 362 of the Criminal Procedure Code, Cap 75** gives this court jurisdiction to review findings, orders and proceedings of the lower court. It 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.”

4. The extent of the jurisdiction therefore only extends to this court satisfying itself as to the legality, correctness or propriety of any order or proceeding undertaken by the lower court. Although while exercising this jurisdiction, this court’s powers are as wide as its power in appeal, the jurisdiction is restricted.

5. **Section 62 of Alcoholic Drinks Control Act, No 4 of 2010** provides: -

“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.”

6. The maximum fine for the offence the applicants were convicted of is Kshs.500,000/- or three years imprisonment. They were fined 210,000/= or 42 months imprisonment. In default: The sum of Kshs.210,000/- is well within the range given by the law. However, not so for the imprisonment. The 42 months meted out to the applicants translates to three years and six months which exceeds the term provided by law.

7. In this regard, to the extent that the trial court meted out a term of imprisonment that exceeded that which is provided for in law, that sentence was illegal and cannot be allowed to stand.

8. The other complaint is that the applicants were first time offenders and that they were disadvantaged as they were not represented. I do not think the issue of being disadvantaged arises here. They seem to have understood the proceedings well. That is why whilst they kept silent on the issue of cross examination and defence, they gave a perfectly good mitigation.

9. The only criticism that may be levelled against the trial court is that, the court does not seem to have referred to the applicants mitigation in arriving at the sentence. Had the court made reference to the mitigation and then proceed to mete out the sentence, it would have been difficult to criticize it.

10. The fine imposed was less than a half. However, the trial court did not indicate in its sentence that it had considered the mitigating circumstances raised. The default imprisonment is the one which is illegal and has to be set aside. In this regard, I am the opinion that since the applicants were first offenders who are young persons and considering their personal circumstances, a fine of Kshs. 100,000/- each and in default 12 months imprisonment would be adequate.

11. Accordingly, the application has merit. I set aside the sentence that imposed the fine of Kshs. 210,000/- each and in default to serve imprisonment of 42 months and substitute therefor with a fine of Kshs. 100,000/- each and in default to serve 12 months imprisonment.

DATED and DELIVERED at Meru this 7th day of March, 2019.

A. MABEYA

JUDGE