

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL REVISION NO. 14 OF 2019

ALFRED KORIR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

[1] This application for revision was filed herein by **Alex Kiptoo** on behalf of the **Alfred Korir**, who was the Accused person before **Kapsabet Senior Principal Magistrate's Court** in **Kapsabet SPM's Criminal Case No. 74 of 2019: Republic vs. Alfred Korir**. The application was filed on **26 February 2019** pursuant to **Section 362** as read with **Section 364(1)(b)** and **Section 365** of the **Criminal Procedure Code, Chapter 75 of the Laws of Kenya**, in respect of the sentence of 9 months' imprisonment passed against the Accused Person on each of the two Counts preferred against him. The Court was thus asked to call for the lower court record and ascertain the correctness, legality and propriety of the sentence.

[2] The lower court record was accordingly called for and it shows that the Applicant, **Alfred Korir**, was charged and arraigned in Court to answer two Counts on **8 January 2019**. In Count I, he was charged with Dealing with Alcoholic Drinks without a Licence, contrary to **Section 8(1)(b)** as read with **Section 64** of the **Nandi County Alcoholic Drinks Act, No. 6 of 2014**. The particulars were that on the **7 January 2019** at Siksik Village within Nandi County, he was found with alcoholic drinks to wit 20 litres of changaa without a license, in contravention of the said Act; while in Count II, the Applicant was charged with Exposing for sale Alcoholic Drinks in a Premise not licensed, contrary to **Section 38(1)** of the **Nandi County Alcoholic Drinks Control Act**; in that on **7 January 2019** at Siksik within Nandi County, he was found displaying alcoholic drinks, namely 28 bottles of Tower for sale inside his house without a licence, in contravention of the Act.

[3] As the Applicant pleaded guilty to the Charges, two issues arise for the Court's determination. The first is whether the plea-taking process was proper and whether the Applicant's plea was unequivocal. The second issue is in respect of the legality, correctness, and propriety of the sentence imposed on the Applicant by the lower court in respect of the two Counts.

[4] As was well explicated in **Adan V. Republic (1973) E.A. 445** the process of taking plea in a criminal matter were set out thus:

(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;

(ii) the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded;

(iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;

(iv) if the accused does not agree the facts or raises any question of his guilt his reply must be recorded and change of plea entered;

(v) if there is no change of plea a conviction should be recorded and a statement of the facts relevant to sentence together with the accused's reply should be recorded."

[5] A perusal of the record of the lower court shows that the aforementioned steps were strictly followed by the Learned Magistrate. The Charges were read to the Applicant in Kiswahili and his responses thereto were taken down in Kiswahili. The facts were then read over in Kiswahili and the 20 litres of changaa and 28 bottles of Tower spirit were produced before the lower court as exhibits. Those facts were admitted by the Applicant to be true; whereupon the Applicant was convicted on his own guilty plea. He was similarly given an opportunity to express himself in mitigation, in which he expressly admitted his five relevant previous convictions.

[6] Clearly, the Applicant's plea was unequivocal. His sentence of 9 months imprisonment on each of the two Counts was also lawful granted that the penalty provided for in **Section 64(1)** of the **Nandi County Alcoholic Drinks Control Act** is a fine not exceeding **Kshs. 500,000/=** or imprisonment for a term not exceeding three years, or both. The Learned Trial Magistrate took into account that the Applicant had 5 relevant previous convictions in respect of which he had been fined. Consequently, I find no merit in the application for revision and would dismiss the same.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF APRIL 2019

OLGA SEWE

JUDGE