



**REPUBLIC OF KENYA**

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

**HCCRA NO. 20 OF 2019**

**RACHAEL MUTHAMA.....APPELLANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. **Rachel Muthama** the Appellant was charged with being in possession of alcoholic drinks contrary to Section 27(1) (b) as read with Section 27 (4) of the Alcoholic Drinks Control Act No. 4 of 2010.

The particulars being that the Appellant on the 22<sup>nd</sup> day of February, 2019 at Machinery Market, in Kibwezi Sub-county within Makueni County, was found being in possession of 125 litters of Karubu packed in 7 plastic containers that does not conform to the Act.

2. She was arraigned in court on 25<sup>th</sup> February, 2019 and pleaded guilty to the charge. She was convicted and after mitigation she was fined Kshs.100,000/=, in default one year imprisonment. The record shows that she was a first offender.

3. She was not able to pay the fine and is therefore serving the sentence

4. In this appeal, she is not challenging the conviction. I have read the record and I am satisfied that the plea is unequivocal.

5. On sentence, she requests for a lighter sentence or she serves the remainder of the sentence while out of prison.

6. The State through Mrs. Owenga has conceded the appeal on sentence. She is not opposed to the Appellant serving the remainder of the sentence out of prison.

7. The record shows that the Appellant was sentenced on 25<sup>th</sup> February, 2019. She has served three (3) months and one (1) week out of the default sentence. She was found in possession of one hundred and twenty-five (125) litters of the alcoholic drink known as "**karubu**".

8. The Appellant does not appear to be a young lady. She mitigated well before the trial court and has done the same here. I have taken all this into account and considering the period served and the negative impact of alcohol on the youth, I think the Appellant will need to complete her sentence but in the following manner.

9. **She will serve the remainder of the prison term on CSO at Kambu chief's office of Kibwezi Sub county. Let the County Probation Officer take the details and act.**

10. **The appeal only succeeds to that extent.**

Orders accordingly.

**DELIVERED, SIGNED & DATED THIS 3<sup>RD</sup> DAY OF JUNE, 2019, IN OPEN COURT AT MAKUENI.**

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**H. I. ONG'UDI**

**JUDGE**