

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

REVISION NO. 21 of 2019

SALOME KEMUNTO.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

{Being a Revision against the conviction and sentence of Hon. B. M. Kimtai – PM Keroka in Keroka Principal Magistrate’s Court Criminal Case No. 680 of 2019}

18th September, 2019

Before Lady Justice E. N. Maina – J

Court

Keroka PMCR 680 of 2019 has been placed before me for revision. The accused in the said case was arraigned on 2 counts, namely: -

Count I: Being in possession of alcoholic drinks contrary to Section 27 (1) (b) as read with Section 27 (4) of the Alcoholic Drinks Control Act.

Particulars: On 6th August 2019 at Mobaba area in Masaba North Sub-county within Nyamira County was found in possession of 2 litres of chang’aa for sale without a licence.

Count II: Being in possession of alcoholic drinks contrary to Section 27 (1) (b) as read with Section 27 (4) of the Alcoholic Drinks Control Act.

Particulars: On 6th August 2019 at Mobaba area in Masaba North Sub-county within Nyamira County was found in possession of 60 litres of Busaa for sale without a licence.

The accused pleaded guilty on both counts and when the facts were read to her she confirmed they were correct.

The trial Magistrate then convicted and sentenced her to a fine of Kshs. 2,000/= or one (1) month imprisonment on Count I and to a fine of Kshs. 30,000/= or six (6) months imprisonment on Count II.

The trial Magistrate has written to this court stating that when he went to destroy the exhibits he found the same were not chang’aa or busaa but plain water.

I have considered the application before me carefully and my conclusion is that apart from the facts not disclosing an offence, given that the substance exhibited in court was not what it was, the manner of recording the plea was also defective. The trial Magistrate ought to have confirmed that the substance brought before him was what it was alleged to be before convicting the accused person. Waiting until after the conviction and sentencing was an error. Accordingly, the application is allowed. The conviction is reversed and the sentences are set aside. The accused person shall be set at liberty forthwith and if any fine had been paid the same shall be refunded.

E. N. MAINA

JUDGE