

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL REVISION NO. 53 OF 2019

FRANCIS MACHARIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This matter has been brought to this court vide a letter dated 29th October 2019 from Milcah C. Kirui Advocate seeking review of imprisonment sentence for 4 months without option of a fine for selling alcoholic drinks without a licence Contrary to Section 62 of the Alcoholic Drinks Control Act No 4 of 2010 by the Principal Magistrate in Bomet Criminal Case No. 3692 of 2019, such sentence being said to be irregular or improper.

2. The request does not quote any Section of the law under which the matter was brought to this court. However, on 6th November 2019 both Miss Kirui for the applicant/convict, and Mr. Murithi for the DPP addressed me. Mrs. Kirui informed me that the matter was brought to me for revision of sentence to provide for an option of a fine. Mr. Murithi on his part said that the convict was sentenced to imprisonment without an option of a fine because he was a habitual offender, having pleaded guilty, but admitted having a previous conviction on a similar offence.

3. I note that the trial court proceedings have also been brought to this court. Indeed, this court has jurisdiction under Section 362 through to Section 364 of the Criminal Procedure Code, to review the record or any Judgment or order of a subordinate court. However Section 364 (5) states that such review jurisdiction will not be exercised where a person who entitled to appeal is the one who brings the request for review. It provides as follows:

“164 (5) when an appeal lies from a finding, sentence or order, and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.”

4. Since this matter has been brought by the Advocate for the convict to this court for review of sentence, and they are entitled to appeal, and they have not stated any reason that would prevent them from appealing, I decline the request for review and dismiss the request of review of sentence. My decision herein to dismiss the request for review does not bar the right of the convict to exercise the right of appeal.

5. The request for review of sentence herein is dismissed.

Dated and delivered at Bomet this 7th November, 2019.

GEORGE DULU

JUDGE

7/11/2019