



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 193 OF 2015**

**PRISCILLA CHEPCHIRCHIR BOEN.....APPELLANT**

**VERSUS**

**REPUBLIC .....STATE**

**RULING**

The appellant **PRISCILLA CHEPCHIRCHIR BOEN** had filed this appeal challenging her conviction and sentence by the learned Chief Magistrate sitting at the Molo Law Courts. The appellant was on 30/7/2015 arraigned in the lower court on a charge of **BEING IN POSSESSION OF AN ALCOHOLIC DRINK THAT DOES NOT CONFORM WITH THE REQUIREMENTS OF THE ALCOHOLIC DRINKS [CONTROL ACT] CONTRARY TO SECTION 27(1) as read with SECTION 27(A) OF THE ALCOHOLIC DRINKS CONTROL ACT, 2010.** The particulars of the charge were that

**“On the 21<sup>st</sup> day of July 2015 at Tunet area in Kuresoi District within Nakuru County was found in possession of an alcoholic drink namely Kangara to wit 180 litres that does not conform to the requirements of the above said Act”**

The appellant pleaded ‘**Guilty**’ to the charge. The facts were read out to her and she maintained her plea of ‘**Guilty**’. The trial magistrate proceeded to convict the appellant and thereafter sentenced her to serve three (3) years imprisonment. Being aggrieved the appellant filed this appeal.

**MR. OBUTU** Advocate argued the appeal on behalf of the appellant. **MR. CHIGITI** learned State Counsel opposed the appeal.

As stated earlier the appellant did plead guilty to the charge. The prosecutor proceeded to read out the facts and produced as an exhibit 20 litres of Kangara.

However no evidence was tendered to prove that the liquid in the 9 jerricans was in fact ‘**Kangara**’. No report from the government chemist was availed to prove what the liquid was. Indeed the learned trial magistrate indicated that what the court saw was

**“Court sees 9 20 litres jerry cans with contents”**

There is no proof as to what the contents of those jerricans was. It cannot be assumed to have been Kangara.

The prosecution in any case is obliged to prove each and every element of the charge beyond reasonable doubt. The fact that the accused pleads guilty does not absolve the prosecution of that obligation.

In the circumstances the charge against the appellant cannot be said to have been proved. Her conviction was erroneous and is hereby quashed. The three year sentence is also set aside. This appeal succeeds. The appellant is to be set at liberty unless she is otherwise lawfully held.

**Dated this 17<sup>th</sup> day of February, 2017**

Mr. Obutu for appellant.

**Maureen A. Odera**

**Judge**