

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL MISC. APP NO. 22 OF 2017

ROSE EMOKORI NANJALA APPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. By a Notice of Motion dated 31st January 2017, the applicant *Rose Emokori Nanjala* requested this court to review the sentence meted out against her in the Chief Magistrate's Court at Eldoret Criminal Case No. 288 of 2017. She prays that upon review of the sentence, the court be pleased to impose a non-custodial sentence.

2. In the trial court, the applicant was convicted on her own plea of guilty in two counts in which she was charged with the offence of incitement to violence contrary to *Section 96* of the *Penal Code* and dealing in changaa contrary to *Section 7(1) (b)* as read with *Section 62* of the *Alcoholic drinks Control Act No. 4 of 2010*. Upon her conviction, she was sentenced to pay a fine of Kshs.25,000 in default to serve 4 months imprisonment in count 1 and a fine of Kshs.40,000 in default to serve six months imprisonment in count 2.

3. The application is supported by an affidavit sworn by the applicant on 31st January, 2017 which replicates the grounds anchoring the motion. In essence, the applicant contends that she is landless and has school going children; that together with her husband, they live in a rental house and have no means to pay the fine imposed by the trial court; that if the application is not allowed, her family will suffer; that the court has discretion to grant the orders sought.

4. The applicant's motion invokes the revisionary jurisdiction of this court. This is a jurisdiction donated to the court by *Section 362* as read with *Section 364* of the *Criminal Procedure Code (CPC)*. The two provisions when read together limits the power of this court in the exercise of its revisionary jurisdiction to only reviewing and correcting decisions or orders made by the lower court as a result of a mistake or irregularity apparent on the record of the court or if it is demonstrated that the orders or sentence sought to be reviewed were tainted with illegality.

5. As stated earlier, the applicant was convicted and sentenced of the offences of incitement to violence contrary to section 96 of the Penal Code and dealing in changaa without a licence contrary to *Section 7(1) (b)* as read with *Section 62* of the *Alcoholic Drinks Control Act*. With regard to the first count, *Section 96* of the *Penal Code* prescribes a penalty of a term not exceeding five years imprisonment while *Section 62* of the *Alcoholic Drinks Control Act* prescribes a sentence of a fine not exceeding Kshs.500,000 or imprisonment for a term not exceeding three years or both.

6. Upon my evaluation of the proceedings before the lower court, I see nothing improper or illegal about the manner in which the court convicted the applicant of the two offences and the sentence imposed in each count. The sentences were in accordance with the law and were therefore lawful. The two offences attract heavy penalties on conviction and in my view, the learned trial magistrate was actually lenient in sentencing the applicant to a non-custodial sentence of payment of fines as opposed to a custodial sentence without an option of payment of a fine.

7. Consequently, I find no merit in the Notice of Motion dated 31st January, 2017 and it is accordingly

dismissed. The Hon. Deputy

Registrar is directed to serve a copy of this ruling on the applicant through the office of the Officer In Charge of the Eldoret GK Women prison.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 20th day of February, 2017.