



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

REVISION CASE NO.1 OF 2017

ROSE KAMANTHE KASUVAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

Kamolo and Associates Advocates through a letter dated 4/1/2017 has sought for an order of revision of the Kilungu Senior Resident Magistrate's Court proceedings conviction and sentence in KILUNGU SRM, CR. NO.779 OF 2016 REPUBLIC =VS= ROSE KAMANTHE KASUVA conducted on the 19th December, 2016. The grounds in support of the Revision are as follows:-

- (1) THAT there was a failure by the said court to read the charge to the accused in a language that she understood.***
- (2) THAT the response by the accused upon facts being read to her did not amount to admission of guilt.***
- (3) THAT the conviction was arrived at in error.***
- (4) THAT the sentence of a fine of Kshs.100,000/= or 2 years in jail was illegal.***
- (5) THAT the trial court failed to take into account that the accused was a first offender.***
- (6) THAT the trial court failed to call for a Probationary report before sentencing.***

The said counsel therefore requests this court to resort to the provisions of Section 362 of the Criminal Procedure Code and to set aside the irregular proceedings and acquit the accused who is now serving a jail term. A copy of the certified court proceedings and charge sheet were duly presented for perusal.

Upon receipt of the above request, this court duly called for the record from the Kilungu Senior Resident Magistrate's Court pursuant to the provisions of Section 362 of the Criminal procedure Code for perusal. The lower court record reveals that the accused herein ***Rose Kamanthe Kasuva*** was on 19/12/2016 charged with an offence of **Manufacturing Alcoholic Drinks** contrary to **Section 32(a)(8) of the Alcoholic Drinks Control Act No.4 of 2010**. The particulars were that on the 17th day of December, 2016 at Vumbu village, Kilome Sub- location in Mukaa Sub – County within Makueni County, she was found having manufactured traditional liquor (**KARUBU**) to wit 20 litres without license contrary to

section of equipments of the said Act. The proceedings appear to indicate that as soon as the charge was read the learned Senior Magistrate entered a plea of guilty even though the response from the accused is not indicated and facts were read to which the accused responded as follows:-

“These are the items and alcohol collected from my house”

The trial court then proceeded to convict her of own plea of guilty. Upon receipt of mitigation the court thereafter fined the accused a sum of Kshs.100,000/= or two (2) years jail.

A thorough scrutiny of the proceedings reveals that the language used in the proceedings as far as the accused is concerned is not indicated. It is not easy to tell the language used by the court while reading the charge and particulars to the accused. Again the response by the accused immediately after the reading of the charge is not indicated thereby suggesting that the accused did not respond to the same. Again the language used by the court when the facts were being read to the accused is not indicated although there is a response by the accused which is captured as ***“These are the items and alcohol collected from my house”***.

It is apparent from the court proceedings that the plea obtained and recorded from the accused was not unequivocal due to the absence of the language used when the charge and facts were being read. In fact the absence of a response from the accused immediately, the charges were read suggest that the plea was not properly done. Further the response by accused upon the facts being read does not in any way infer an admission of guilt as she did not categorically admit to manufacturing alcoholic drinks as alluded to in the charge sheet.

Section 362 of the Criminal procedure Code gives revisionary powers to this court to call for and examine the record of any criminal proceedings before any subordinate court for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to regularly of any proceedings of any subordinate court Section 364 of the Criminal Procedure Code gives the high court powers with which to deal with any issues requiring revision. In the present revision, the plea appears not to have been properly done due to the failure by the court to indicate the language the accused understood. It is the finding of this court that the plea was not unequivocal and thus the proceedings were irregular.

In such a scenario it is highly likely that the accused did not understand the court proceedings and hence was not accorded a fair trial in the circumstances. She did not get an opportunity to understand the charges and to properly plead to the same. Consequently, the conviction entered against the accused is quashed and sentence set aside. This court has been called upon to acquit the accused.

I note that the sentence was handed down by the trial court on the 19/12/2016 and that she has not served the sentence substantially. I find that it would be proper that the plea be taken afresh. I therefore direct that the accused be produced before Kilungu Senior Resident Magistrate’s court on the **23/02/2017** for a fresh plea to be taken. This order be served upon the Defence Counsel, Officer in Charge Machakos G. K. prison, the Prosecution Counsel Kilungu Court.

Dated at Machakos this 16th day of February 2017.

D. K. KEMEI

JUDGE