REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL REVISION NO. 1 OF 2017

ROSE MUYATHI……...APPLICANT

VS

REPUBLIC……RESPONDENT

RULING

Before me is an application under certificate of urgency brought by the applicant and filed on 9th March 2017 asking for review of sentence and conviction of the trial court.

The applicant was convicted on her own plea guilty of to a charge of selling alcoholic drink without a licence contrary to section 7(1)(b) as read with section 62 of the Liquor Licensing Act of 2010,andselling alcoholic drink after hours contrary to section 34 as read with section 4 of the same Act.

She was sentenced to pay a fine of Khs 20,000= or serve six months imprisonment on count 1, and a fine of Kshs 10,000= or 3 months imprisonment on count 2.

The applicant has complained that the sentence is harsh and excessive, and that she has young children to take care of.

Though under section 365 of the Criminal Procedure Code (Cap 75) this court is not bound to hear the parties, I allowed both the applicant and the DPP to address me. The Prosecuting Counsel Mr. Okemwa informed the court that the applicant did not tell the trial court that she had young children of 7 and 5 years.

This court has wide powers in its criminal revision jurisdiction conferred under section 364 of the Criminal Procedure Code.

Having perused the record of the trial court and considered the complaints of the applicant and the submissions of the State, I am of the view that the conviction was proper. The guilty plea of the applicant was unequivocal. I uphold the conviction.

With regard to sentence, the applicant has complained that the trial court did not say if the default prison sentence was consecutive or concurrent. All this in my view means that the default prison sentences were to run consecutively. I am however of the view that the nature of the offences and the quantity of alcohol which was given in the facts of the prosecutor as 7 bottles, and the fact that the applicant pleaded guilty and asked for leniency and was a first offender, did not call for such a severe sentence. The applicant has been in prison for 2 months now which I consider to be adequate punishment.

I set aside the sentence of the trial court and order that the sentence will be that already served. The effect is that the applicant will be released from prison, unless otherwise lawfully held.

Dated and delivered at Garissa this 4th April 2017.

GEORGE DULU

JUDGE