



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NO. 54 OF 2017**

**MICAH MUTEGI OMWOYO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The lower court file in **Makadara Chief Magistrate’s Court Cr. Case No. 1027 of 2017** was forwarded to this court pursuant to **Sections 362 and 364(1)(b)** of the **Criminal Procedure Code** so that the court can satisfy itself as to the correctness, legality or propriety of the conviction and sentence meted against the Applicant or as to the regularity of the said record. The Applicant in the case was charged with the offence of being in possession of alcoholic drink that does not conform to the **Alcoholic Drinks Control Act No. 4 of 2010** contrary to **Section 27(1)(b)** as read with **Section 27(4)** of the said Act. The particulars were that on 23<sup>rd</sup> February, 2017 at Githurai Railway Bridge in Kasarani Division within Nairobi County was found in possession of alcoholic drink that does not conform to the Alcoholic Drinks Control Act, to wit, 40 litres of changaa which was packed in 2 of twenty liters plastic containers contrary to the requirements of the 250 ml glass bottle. The Applicant was convicted on his own plea of guilty. He was sentenced to pay a fine of Kshs. 120,000/= in default serve one year imprisonment. The sentence was passed on 17<sup>th</sup> March, 2017.

The revision herein was sought by way of a letter dated 3<sup>rd</sup> April, 2017 by counsel for the Applicant, M’Njau and Mageto Advocates. Counsel urged the court to quash the conviction and set aside the sentence imposed. The major grounds on which the application is premised are that the Applicant did not understand the language of the court when he took the plea, that the facts of the case were read to the Applicant by the prosecutor, that the Applicant never pleaded to the facts of the case although the court recorded that he did, that the learned magistrate failed to caution the Applicant of the attendant penalty before he pleaded, that the facts of the case would not have led to a conviction, that both the conviction and sentence were based on a defective charge sheet, that the sentence was illegal and in any case the fine imposed was harsh and excessive in the circumstances.

The application was canvassed before me on 3<sup>rd</sup> May 2017. Leaned counsel Mr. Mageto for the Applicant reiterated the grounds on which the application is premised. Learned State Counsel, Ms. Sigei for the Respondent on the other hand opposed the application. She argued that a revision based on a plea of guilty was not tenable. Her view was that the issue raised by the Applicant that the plea was not unequivocal could only be canvassed on appeal and that the Applicant having pleaded guilty a revision could only lie on the legality or extent o the sentence. In that regard, she submitted that the sentence passed was legal and proper. She urged that the application be dismissed.

I have considered the application and the respective issues canvassed. The application is brought under both **Sections 362 and 364(1)(b)** of the Criminal procedure Code. Section 362 broadly provides for the powers of the High Court on revisions. The court is conferred with the powers to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court. **Section 364(1)(b)** on the other hand provides for one of the remedies that the High Court may grant pursuant to Section 362. The same reads

as follows:

***(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court May-***

***(b) In the case of any other order other than an order of acquittal, alter or reverse the order.***

It behooves this court to reexamine the record of the trial court pursuant to **Section 362** with a view to determining whether there exists any incorrectness, illegality or impropriety of the finding of the sentence passed or any irregularities on the record of proceedings. In the application, it is argued that both the conviction and sentence should be set aside on grounds here above enunciated. My understanding and interpretation of the grounds argued leads me to conclude that the Applicant advances a case that the plea was not unequivocal. That is to say that the same was not taken in a proper manner as provided under **Section 137 (a)(i)(ii) & (iii)** of the **Criminal Procedure Code**. That being the case, the arguments advanced by the Applicant would not constitute a ground necessitating a revision. **Section 364(5)** of the **criminal Procedure Code** is clear that no revision shall be entertained when an appeal lies from a finding, sentence or order. It is trite that when a party argues that the plea was not unequivocal, the only remedy available is to appeal against both the conviction and sentence. When an accused pleads guilty, a revision can only be entertained with respect to the extent and legality of the sentence. See Section 348 of the Criminal Procedure Code. Even if the Applicant herein argues that the sentence was excessive, he in addition also advances a case against the conviction. Respectively, he can only find remedy in an appeal.

In the premises, this application lacks merit and the same is hereby dismissed.

**DATED and DELIVERED this 9<sup>th</sup> day of May, 2017**

**G. W. NGENYE-MACHARIA**

**JUDGE**

**In the present of**

- 1. M/s Kosgei h/b for the Applicant*
- 2. M/s Nyauncho for the Respondent*