



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT GARISSA**

**Criminal Appeal No. 103 Of 2015**

**SALVIN KILUVA NZIOKA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(From the conviction and sentence in Mandera Senior Principal Magistrate's Criminal Case No. 426 of 2015 – P.N. Areri - SRM)*

**JUDGMENT**

The appellant was charged with two counts. Count 1 was for possession of substandard liquor contrary to Section 31 (2) as read with Section 31 (3) of the Alcoholic Drinks Control Act No. 4 of 2010. The particulars of the offence were that on 27<sup>th</sup> July 2015 at Bula Amar in Mandera East Sub County within Mandera County was found in possession of substandard liquor to wit 15 litres of Kurunganga which does not conform to the Alcoholic Drinks Act not properly packed, alcoholic content not shown and not standardized.

Under count 2, he was charged with selling liquor without a liquor license contrary to Section 7 as read with Section 62 of the same Act. The particulars of offence were that on the same day and place was found selling sub standard liquor to wit Kurunganga without a valid liquor licence.

He was recorded as having pleaded guilty to the charges. He also admitted the facts summarized by the prosecutor. He was thus convicted. He was sentenced to a fine of Ksh. 50,000/= or 7 months imprisonment on count 1 and Ksh. 100,000/= or in default to serve one year imprisonment on count 2.

He has now come to this court on appeal. In his grounds of appeal, he said he was forced to plead guilty. He also appealed against sentence.

The appellant also made oral submissions in support of his appeal in court.

Learned Prosecuting Counsel Mr. Okemwa opposed the appeal, but stated that the sentence of 7 months imprisonment was a mistake as the law only allowed a sentence of 6 months imprisonment for count 1. Counsel asked the court to uphold the sentence in count 2.

My perusal of the record shows that the appellant pleaded guilty and was properly convicted after the facts were given by the prosecutor in court. The conviction is thus in my view proper.

The learned prosecuting counsel has pointed out that the default sentence of 7 months imprisonment is more than what the law allows. Courts should be slow to pronounce maximum sentences for first offenders even if the sentence is a default sentence. An unlawful default sentence also cannot be supported by the law and appellant courts. In my view, both default sentences are herein excessive. I will interfere with the same. They should also not run consecutively, as they are from the same incident and case.

Consequently, I dismiss the appeal on conviction. I uphold the sentence on fines. However, the default

sentence for count 1 is set aside and substituted with 5 months imprisonment.

The default sentence for count 2 is also set aside and substituted with 6 months imprisonment. The two default sentences will run concurrently, which translates to a total sentence of 6 months imprisonment from the date the appellant was sentenced by the trial court.

Orders accordingly.

**Dated and delivered at Garissa this 6<sup>th</sup> May 2016**

**GEORGE DULU**

**JUDGE**