



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CRIMINAL REVISION NO. 176 OF 2016**

MARY MWAURA .....APPLICANT/LICANT

VERSUS

REPUBLIC.....RESPONDENT

**RULING**

1. The application for revision has been brought by way of a letter from M/s Mwanyale and Kahindi, advocates dated 4<sup>th</sup> December 2015, under Articles 50(2) (p) and 165 (6) and (7) of the Constitution and Sections 362 and 364, both of the Criminal Procedure code.

2. In this letter, the applicant is seeking to have the sentence which was meted against him by the trial magistrate in Shanzu law courts PCR No 927 of 2015 on 24<sup>th</sup> November 2015 revised.

3. The application is premised on the following grounds;-

(a) that the fine that was meted against the Applicant is excessive and punitive in view of the charge faced by her;

(b) that under Article 50 (2) (p) of the Constitution, the applicant is entitled to a less severe punishment.

4. The Applicant was charged with the offence of being in possession of Alcoholic drink that does not conform with the requirements of Section 27 (1) (b) as read with section 27 (4) of the Alcoholic Drinks Control Act No 4 of 2010.

5. The applicant pleaded guilty to the charge and particulars thereof stating that she had been found with 10 litres of alcoholic drink namely Mnazi, which was not in conformity with the requirements of the said Act, as it had been packed in a plastic container. She was convicted and sentenced to pay a fine of Ksh 40,000/= or serve 6 months imprisonment in default. She finds this sentence excessive.

6. Under Article 165 (6) of the Constitution, it is provided that;

***(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.***

Article 165 (7) of the Constitution provides that;

***(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.***

7. Under Section 362 of the Criminal Procedure Code, the High court in granted powers of revision in the following matter:

***“The High Court may call for and exercise the record of any Criminal proceedings before any subordinate court for the purpose of satisfying itself as to the conviction, legality or propriety of any finding, sentence or order rendered or passed, and as to the regularity if any proceedings if any such subordinate court.”***

8. It is worth noting that Section 27 (4) of the Alcoholic Drinks Control Act is the punitive Section and it provides that:

***“A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding two Million shillings or to imprisonment for a term not exceeding five years or both”.***

9. To determine whether the sentence which was imposed against the applicant by the trial magistrate in Shanzu Criminal Case No 927 of 2015 was excessive and punitive, I have perused the record of proceedings therein.

10. I have also read into the provisions of Articles 50 (2) (p) of the Constitution, 2010 which provides that:

***“Every accused person has the right to fair trial, which includes the right***

***(p) to the benefit of the least severe of the prescribed punishment for an offence, if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentence.***

11. In Alister Antony Pareira vs State of Maharashtra, the court held that:

***“Sentencing is an important test in matters of crime. One of the prime objectives of the criminal law is the imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused in proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances”***

12. The findings in this case emphasizes a trial court’s discretion in passing sentence, in that, it is expected to consider the purpose of it under the common law. This is

- (a) to ensure that the offender is adequately punished ;
- (b) To prevent crime by deterring the offender and other person from committing similar offences;
- (c ) to protect the community from the offender;
- (d) to promote the rehabilitation of the offender;
- (e) to make the offender accountable for his or her actions;

(f) to denounce the conduct of the offender;

(g) to recognize the harm done to the victim of crime and the community;

13. In the instant case, the applicant was sentenced to a fine of Ksh 40,000 or serve six (6) months imprisonment in default, for an offence whose penalty is a fine not exceeding Ksh two(2) Million shillings or imprisonment for a term not exceeding five ( 5) years or to both.

14. It can therefore be clearly seen that the fine meted was within the law prescribed law.

15. Article 50 (2) (p) of the Constitution relates to a right an accused person is entitled to in a case where the prescribed penalty has been changed between the time the offence was committed and the time of sentencing.

16. The Applicant in this case is, according to the particulars of the charge, said to have committed the offence on 23<sup>rd</sup> November 2015.

17. The alcoholic Drinks and .Act No 4 of 2010 under which the applicant was charged, was passed in the year 2010, which is before she committed the offence. The applicant, therefore, does not qualify any benefit for the provisions of Article 50 (2) (p) of the Constitution.

18. The Applicant was said to have been found with 10 litres of alcoholic drink, namely Mnazi. This amount is definitely too much for a normal consumer.

19. I therefore find the sentence imposed against the applicant commensurate to the amount of alcoholic drink he was found in possession of and meant to deter him and others from committing a similar offence.

20. Having found so, the application for review by the Applicant is within merit and I dismiss the same accordingly.

Ruling delivered and signed at Mombasa this 8th day of September 2016

**D .O. CHEPKWONY**

**JUDGE**

**In the presence;**

M/s Mutua for the state- present

Ms/ Sidanju holding brief for Mr Mwanyale for Applicant.

C/clerk- Kiarie