



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL REVISION NO. 3 OF 2015**

**REPUBLIC**

**VERSUS**

**BENARD KIOKO MUIA ..... APPLICANT**

**RULING ON REVISION**

1. The **SRMC Tawa Criminal Case No. 226/12- Republic versus Bernard Kioko Muia** was referred to the High Court for revision by the **Ag. SRM Tawa Law Courts**.
2. The Accused was charged with the offence of being in possession of alcoholic drinks contrary to **section 27 (1) (b) as read with sub section 4 of the Alcoholic Drinks Control Act 2010**.

The particulars of the offence were that on the 10<sup>th</sup> day of July 2012 at **Kitandini village, Kalimani Location in Mbooni East within Makueni County** was found being in possession of alcoholic drinks namely *Karubu* to wit 20 litres without a licence.

3. The Accused pleaded guilty and was convicted and sentenced to a fine of Kshs.50,000/= in default three years imprisonment.
4. The default sentence is illegal. The default sentence should not have exceeded one year. **Section 28 (2)** of the **Penal Code** provides as follows:

**“In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale-**

Amount	Maximum Period
Not exceeding Sh.500... ..	.. 14 days
Exceeding Sh.500 but not exceeding Sh.2,500... ..	1 month
Exceeding Sh.2,500 but not exceeding Sh.15,000 ... ..	3 months

**Exceeding Sh. 15,000 but not exceeding**

**Sh. 50,000 ... ..**

**Exceeding Sh.50,000 12 months.”**

5. Taking into account the mitigation and the period of three months already served, I reduce the sentence to the period already served.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 12<sup>th</sup> day of February 2015.**

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**B. THURANIRA JADEN**

**JUDGE**