

KREPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRA 95 OF 2013

(From original conviction and sentence in Criminal Case number 277 of 2014 of the Principal Magistrate`s court at Ukwala – Hon. R.M. OANDA-AG PM)

ZAINAB AKINYI BARASAAPPLICANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGEMENT

The appellatant was charged with manufacturing and packaging of alcoholic drink in un-prescribed container contrary to section 32(a) (b)as read with subsection 8 of the Alcoholic drinks control Act. The particulars were that on 20th May 2014 at Ligingo trading centre in Ugenya District within Siaya county she was found with **200 litres of Busaa** in un-prescribed containers. She pleads guilty to the charge and was sentenced to a fine of **ksh. 50,000/-** in default to serve five years imprisonment. She appealed and as can be discerned from the petition of appeal and the written submissions the appeal is only on the sentence. At the hearing of the appeal she relied on the written submissions in which she beseeches this court to forgive her and promises not to re-offend.

Prosecuting Counsel conceded the appeal but only to the extent that the default sentence was erroneous in that whereas the Act provides for three years imprisonment the Trial Magistrate sentenced the appellatant to five years imprisonment.

I have considered the submissions by both sides carefully and concur with prosecuting counsels` submissions that the sentence is illegal to the extent that it ordered that the appellatant serve a term of five years imprisonment in default of payment of the fine imposed. **Section 32 (8) of the Alcoholic Drinks Control Act** provides for a fine not exceeding **one million shillings** or to imprisonment for a term not exceeding three years or to both. The fine of ksh. 50,000/- imposed was therefore not excessive but the default sentence ought to have been three years not five. The appeal therefore succeeds to the extent that the sentence is now altered to a fine of ksh. 50,000/- (fifty thousand)in default to serve three (3) years imprisonment. It is so ordered.

E.N. MAINA

JUDGE

Signed, dated and delivered in Kisumu this 5th day March, 2015

Mr. Ruto for the state

Appellant in person

Moses Okumu- Court clerk

