

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

H.C CR. REV. NO. 4 OF 2015

CLARIS AKINYI----- APPELLANT

VERSUS

REPUBLIC-----RESPONDENT

RULING

1. In conceding to this Application for Revision, Mr. Owiti State Counsel referred this court to two decisions of Ongudi J in Mary Chepkwony vs Republic (2015 eKLR and Gladys Cherotich vs Republic(2015) eKLR. In the former decision the Judge held,

“Further, Kangara is not an alcoholic drink under Section 2 of The Act”

2. The Applicant herein was charged with the offence of Being in possession of Alcoholic Drinks without a Licence contrary to Section 7(1) (b) as read with Section 62 of The Alcoholic Drinks Control Act No. 4 of 2010 (The ‘Act’). The particulars being that on the 3rd day of July 2015 at Esukulu village in Bukhayo West Location within Busia County, was found in possession of kangara to wit 350 litres without a licence. On her own plea of guilty, she was convicted and fined Kenya Shillings 200,000/- and in default to serve a prison term of 12 months. The Applicant did not pay the fine and is serving the term.
3. Section 3 of The Act defines alcoholic drink as follows:

“alcoholic drink” includes alcohol, spirit, wine, beer traditional alcoholic drink, and any one or more of such varieties containing one-half of one per cent of more of alcohol by volume, including mixed alcoholic drinks, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being.

This indeed is a wide definition. In Gladys Cherotich (supra), the Judge explained why she held that the kangara for which the Accused therein was charged with possessing was not an alcoholic drink. She stated

13. Is Kangara therefore an alcoholic drink? The charge sheet refers to it as a substance used in the distilling of changaa. This confirms that kangara is not an alcoholic drink but a substance used in distilling changaa which is an alcoholic drink.

I do not find any fault in the above reasoning. However the facts of the matter before this court are slightly different. Here the accused person is said to have been in possession of an alcoholic drink called kangara and not as in the Gladys Cherotich (*supra*) case where she was charged with being in possession of a substance called kangara used in the distilling of changaa. On my part, I cannot unequivocally say that the kangara which the Applicant here possessed is not an alcoholic drink. In any event the person facing the charge and who was in possession of the substance herself, in pleading guilty, was admitting that it was an Alcoholic Drink.

4. Anyhow as the State concedes, I am minded to revise the sentence imposed. The Applicant has served prison since 6th July 2015. That is just over 3 months. I reduce the sentence to the period served.

Dated, signed and delivered at Busia this 13th day of October 2015.

F. TUIYOTT

J U D G E

In the presence of :-

OrwasaC/Assistant

In persons for Applicant

Owiti for State