



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**  
**CRIMINAL REVISION NO 6 OF 2015**

**MATHIAS NYAMBU WAMOTO..... APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

**INTRODUCTION**

1. By a letter dated 2<sup>nd</sup> October 2015 on the same date, the Applicant moved the court for a revision of the sentence that was meted upon him and prayed that he be considered for non-custodial sentence.
2. He was charged in **Cr Case No 462 of 2015** at the Senior Resident Magistrate's Court at Wundanyi with the offence of selling traditional liquor without a permit to which he pleaded guilty and was sentenced to one (1) year imprisonment without the option of a fine.
3. It was his view that the sentence was extremely harsh taking into account that this was his first offence, he was sickly, that he was an old man aged sixty two (62) years and a single parent with school going children.
4. In its Written Submissions filed on 7<sup>th</sup> October 2015, which were translated to the Applicant from English to Kiswahili, the State submitted that the Learned Trial Magistrate did not err in law when he exercised his discretion and sentenced the Applicant as aforesaid as the sentence was legal, commensurate and well within the law. It urged this court not to disturb the same.
5. A perusal of the proceedings shows that the Applicant was charged with the offence of selling traditional liquor without a permit contrary to Section 7(1)(b) as read with Section 62 of the Alcoholic Drinks Control Act Cap 121A (Laws of Kenya).
6. Section 7(1) (b) of the said Act provides as follows:-

**No person shall —**

**(b) sell, dispose of, or deal with any alcoholic drink except under and in accordance with a licence issued under this Act.**

8. Section 62 of the said Act provides as follows:-

**“Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.”**

9. During his oral submissions to the court, the Applicant stated that he had prepared the traditional

- alcohol to offer people who he had hired to assist him with a construction at his house. He vehemently denied that he was selling the traditional liquor.
10. That may well have been so. However, Section 7(1)(b) of the said Act makes it punishable for any person to **deal** with alcoholic drink except in accordance with a license issued under the said Act. There was no indication that the Applicant furnished the Trial Court with any documentary evidence showing that he was licensed to sell, dispose of, or deal with alcoholic drink.
11. The court record of the Trial Court also indicated that the Applicant admitted having committed the offence and said nothing during mitigation. Bearing in mind that the sentence that was imposed on the Applicant was within the law, the court was satisfied that it could not interfere with the decision of the Learned Trial Magistrate as the same was correct, legal and proper.

### **DISPOSITION**

12. In the circumstances foregoing, the court found the Applicant's application to have been without merit and the same is hereby dismissed.
13. It is so ordered.

**DATED and DELIVERED at NAIROBI** this 13<sup>th</sup> day of October 2015

**J. KAMAU**

**JUDGE**

In the presence of:-

Mathias Nyanbu Wamoto      Appellant

Miss Mukangu                      State

Simon Tsehlo– Court Clerk