

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL REVISION NO.221 OF 2015

SAMMY MUSUMBA OTIMA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. The appellant was charged with the offence of being in possession of alcohol drinks contrary to section 27(1)(b) of the Alcoholic Drinks Control Act No.4/2010. The particulars were that on the 28th day of July, 2015 at Muhoroni Township in Muhoroni District within Kisumu County was found in possession of alcoholic drink namely changaa to wit two liters which did not conform to the standards set by the said Act.

2. The appellant on his own plea of guilty was sentenced to serve a 1 year jail term. The substance of the appellant's appeal is on the sentence.

According to his counsel the trial court ought to have considered a non-custodial sentence having regard to the appellant's mitigation.

3. The state on the other hand argued that the appellant was a repeat offender and the court took into consideration the same when handing over the one year jail term.

4. I have considered the parties oral submissions herein as well as perused the proceedings of the trial court. Section 348 of the Criminal Procedure Code states that;

“no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a substantive court, except as to the extent or legality of the sentence.”

5. The appellant does not challenge the fact that he pleaded guilty to the charge. His only beef with the decision of the trial court is failing to grant him a non-custodial sentence. Respectfully I do not find that the trial court exercised its discretion unfairly or wrongly.

6. However taking into consideration his mitigation and the fact that he has 2 young children and a widower I am persuaded to allow the appeal only to the extent of reducing the sentence from one year to four months from the date of the trial court's judgment.

Orders accordingly.

Dated, signed and delivered this 2nd day of November 2015.

H. K. CHEMITEI

J U D G E