

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 5 OF 2014

FAITH NGENO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence made by the learned Principal Magistrate at Sotik court (Hon. P. Olengo) in Sotik Principal Magistrate's court criminal case No.43 of 2014 on 14/01/2014)

JUDGMENT

FAITH NGENO, the Appellant herein pleaded guilty to a charge of two counts. In the first count, the appellant faced a charge of selling alcoholic drinks without a licence contrary to **Section 27(1)** of the **Alcoholic Drinks Control Act no.4 of 2010(1)**. While in the second count the appellant was accused of selling alcoholic drinks without proper packaging contrary to **Section 32(1)(c)** of **Alcoholic Drinks Act no.4 of 2010(1)**. She was convicted and sentenced to a fine of Kshs.10,000 in default to serve two months imprisonment. Being dissatisfied the appellant preferred this appeal.

On appeal the appellant put forward the following grounds:

- a. **The facts in each count were not read to the appellant before conviction hence the plea was not properly taken.**
- b. **That without prejudice the sentence passed was harsh and punitive.**

Miss. Muthee, learned State Counsel conceded the appeal on the ground that the appellant was convicted on a charge based on the definitive section hence the charge is fatally defective. With respect, I agree with the submissions of Miss. Muthee. The other issue which is apparent on record is the fact that the factual basis of the charge were not outlined by the Prosecutor. What was read out to the appellant was the substance of the charge which the appellant pleaded guilty to. It is envisaged under the proviso to **Section 207(2)** of the **Criminal Procedure Code** that after entering a plea of guilty and before passing sentence, the prosecution is permitted to outline the facts upon which the charge is founded. This was not done in this appeal, consequently, the plea cannot be said to be unequivocal.

In the end, the appeal is allowed. The conviction is quashed and the sentence is set aside. If any fine has been paid, the same be refunded forthwith or if the appellant is serving the default sentence she should be set free forthwith unless lawfully held.

Dated, signed and delivered in open court this 7th day of March, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Miss. Kivali for Director of Public Prosecution

N/A Mr. Rono for Appellant

Appellant present in person