



REPUBLIC OF KENYA

High Court at Embu

Criminal Appeal 1 of 2013

JOYCE WAMBURA MWANGIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in Cr. Case No. 6 OF 2013 at the Principal Magistrate's Court at Runyenjes by HON. R.O. OIGARA – Ag SPM on 2/1/2013

J U D G M E N T

JOYCE WAMBURA MWANGI hereinafter referred to as the Appellant was charged with the offence of operating a bar without a valid licence contrary to section 7(1)(b) as read with section 62 of the Alcoholic Drinks Control Act No.4 of 2010.

The particulars being that **on the 1st day of January 2013 at around 1700 hours at UGWERI MARKET in Embu County JOYCE WAMBURA MWANGI was found selling Alcoholic drinks namely bear in a bar namely HILLS BAR without valid licence in contravention of the said Act.**

When the Appellant appeared for plea the charge was read to her on 2/1/2013 in a language she understood which was Kiembu. She pleaded guilty. The facts were read to her and she admitted them. She was convicted and was said to be a 1st offender. She said nothing in mitigation and was fined shs.100,000/= in default twelve (12) months imprisonment. She was aggrieved by the conviction and sentence and filed the following grounds of appeal;

1. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected himself when he concluded in his Judgment that the Appellant had really committed the alleged offence when there was no credible evidence adduced by the Prosecution to warrant the conviction and sentence.
2. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected himself when he convicted and sentenced the Appellant plea of guilty when in actual facts the Appellant never knew the seriousness and/or repercussions of pleading guilty to the offence.
3. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected himself when he convicted the Appellant with an offence of operating a bar without a valid licence which did not show/indicate who was being sold the beer and the plot where the premises is situated and the type of beer being sold thereby making the whole charge defective in its totality.
4. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected

himself when he convicted the Appellant and sentenced him to serve twelve (12) months in default she pays a fine of ks.100,000/= when the actual charge was unclear and defective.

5. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected himself when he convicted the Appellant against the weight of the evidence and using the Prosecution selectively to convict him and without considering the offences alleged to have been committed and the circumstances surrounding the same.

6. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected himself when he convicted the Appellant and she did not understand the language used as the same was read to her in Kiambu which was not clear to her and no one was arrested.

7. The learned acting Senior Principal Magistrate erred in law and facts and seriously misdirected himself when he convicted and sentenced the Appellant twelve (12) months in default to pay a fine of ks.100,000/= considering the circumstances surrounding the commission of the alleged offence and the mitigation.

When the appeal came for hearing the Appellant made oral submissions. She said she was arrested on 1/1/2013 which was a public holiday while the licence had expired on 31/12/2012. She therefore operated within the allowed grace period of two weeks before renewing the licence. She went to on to mitigate about her two minor children. In actual fact she said she was an employee at the said bar.

The State through learned State Council Miss Ingaidzu opposed the appeal as the sentence is lawful.

My perusal of the record reveals that this is a matter where the Appellant pleaded guilty and was convicted on admission. I do find that the plea was properly taken and facts read to the Appellant. The language used is indicated. The plea was unequivocal. The Applicant was given a chance to mitigate but she chose to say nothing. She can't blame the Court for that. And having found the plea to be unequivocal I find no merit in the numerous grounds attacking the conviction. I however note that the facts revealed that the Appellant was only selling 20 bottles of Allsops brand of beer in her bar without a valid licence. And as can be noted from a photocopy of some licence annexed herein, the bar owner is ZAPHANIA NDWIGA. One wonders whether he too was charged with a related offence.

Section 62 of the Alcoholic Drinks Control Act No.4/10 does set the maximum fine for offences under the said Act. It does not set the minimum. The Court should therefore consider circumstances such as this one of the Appellant and give a reasonable fine. In as much as the bar must be licenced, we have the bar owners and the employees. Its the bar owners who should take out the licences, and the Law enforcers must also go for them. I am in no way saying that the employees should sell in unlicenced premises.

In this particular case considering that the Appellant was a 1st offender and was an employee, I will set aside the fine of shs.100,000/= in default twelve (12) months imprisonment and substitute it with a fine of shs.30,000/= in default four (4) months imprisonment from the date of conviction. To that extent only does the appeal succeed.

Orders accordingly.

DATED SIGNED AND DELIVERED AT EMBU THIS 10TH DAY OF MAY 2013.

**H.I. ONG'UDI
J U D G E**

In the presence of;

M/s Ingahizu for State

Appellant

Njue – C/c