



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL REVISION CASE NO. 8 OF 2013

REPUBLIC.....APPLICANT

versus

JUDY CHOMA WANJIRURESPONDENT

REVISION

1. This matter has been referred to court for revision under the provisions of section 362 of the Criminal Procedure Code by the Applicant for the court to examine the record as to the correctness, legality and prosperity of the proceedings and judgment imposed on the convict on 26.6.2013.
2. The main complaint herein is that the Applicant was charged with the main charge as per the charge sheet dated 24th June 2013 as follows:

Breach of Licence contrary to section 34(a) of the Alcoholic Drinks Control Act No. 4 of 2010 the fact thereof being that on 22nd day of June 2013 at 11.30 hours at Kiaruhiu Trading Centre in Mathira East District within Nyeri County was found selling alcoholic drinks at Holly Hock Bar to customers who were not taking meal.

3. He faced an alternative charge of failing to display licence in a conspicuous place on a premises contrary to section 20(1) as read with section 62 of the Alcoholic Drinks Control Act No. 4 of 2010 the particulars of which were that on the 22nd day of June 2013 at 11.30 hours at Kiaruhiu trading centre in Mathira East District within Nyeri county, failed to display her licence in a conspicuous place on Holly Hock Bar Premises.
4. The record from the trial court indicates that she pleaded not guilty on count I but pleaded guilty on count II for which the court ordered that the accused be released on a bond of Kshs. 50,000/- and a similar surety in respect of count I.
5. On count II the accused pleaded guilty to the facts as read by the prosecution and was convicted then to pay a fine of Kshs. 100,000/- or in default serve one year imprisonment.
6. It should be noted that as per the charge sheet the accused was charged with one count and an alternative charge and therefore there was no count II upon which the accused could have pleaded.
7. Having pleaded guilty to the alternative charge I take the view that the main charge was therefore not available for trial and the facts as presented supported a conviction on the alternative charge and not the main charge.
8. I have also noted that the accused person was not given any chance to mitigate and neither was her records availed to the court before passing the sentence herein.
9. I therefore set aside the conviction and sentence herein and the order in respect of count I and substitute the same with the following orders.

i. Place of guilty in respect of alternative charge.

ii. Conviction on the alternative charge on the accused plea of guilty.

iii. The file to be placed before the trial court to enable the same take the Applicants mitigation and to receive a report on her previous record if any.

iv. The trial court to pass an appropriate sentence on the alternative charge upon receiving the revised persons mitigation and record of previous convictions if any.

10. The Advocate for the Applicant to be served to appear before the trial court and the applicant to be produced in court on 15th July 2013.

Dated at Nyeri this 8th day of July 2013.

J. WAKIAGA

JUDGE