



REPUBLIC OF KENYA



**Republic v Esther (Criminal Case E1921 of 2023)  
[2023] KEMC 312 (KLR) (15 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 312 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CRIMINAL CASE E1921 OF 2023  
PA NDEGE, SPM  
AUGUST 15, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NANCY NYAMBURA ESTHER ..... ACCUSED**

**RULING**

1. The accused was charged with the offense of conducting the trade of a bar business without a valid liquor license contrary to section 8(1)(b) as read with section 62 of the *Nakuru county government (alcoholic drinks) act* of 2014. She also faced a second count with the charge of carrying out trade without license contrary to section 32(1) as read with section 32(2)(b) of the *Nakuru county trade act*, third count on operating a food premise without food hygiene contrary to section 38(1) as read with section 67(1) of the *Nakuru county government public health and sanitation act* of 2017 and a fourth count of handling food in a food plant without valid medical certificate contrary to section 41(2) as read with section 67(1) of the *Nakuru county public health and sanitation act* of 2017.
2. Accused herein pleaded guilty and was convicted and sentenced to fines as stated below;
  - (i) count 1 fined 6000 in default 2 months imprisonment
  - (ii) count 2 fined 750 in default 1-month imprisonment
  - (iii) count 3 fined 1500 in default 1-month imprisonment
  - (iv) count 4 fined 1500 in default 1-month imprisonmentR/A 14 days, sentence to run consecutively.
3. The issue remaining in this matter is whether the alcohol seized as exhibits should be forfeited. Forfeiture means losing a right, privilege, or property without compensation as a consequence of



violating the law, breaching a legal obligation, failing to perform a contractual obligation or condition, or neglecting a legal duty.

4. The prosecutor herein prays for the exhibits to be forfeited to the state. In mitigation, the accused is recorded to have stated that she seeks the forgiveness of the court, she prays that the alcohol seized as exhibits be returned to her and not forfeited to the state because it is her only means to fend for herself and she would pay for the license that would enable her to sell her alcohol legally.
5. The procedure on forfeiture of goods is set out in section 389A of the [Criminal Procedure Code](#) (Chapter 75 of the Laws of Kenya) which provides as follows;

389A(1) Where, by or under any written law (other than section 29 of the [Penal Code](#)), any goods or things may be (but are not obliged to be) forfeited by a court, and that law does not provide the procedure by which forfeiture is to be effected, then, if it appears to the court that the goods or things should be forfeited, it shall cause to be served on the person believed to be their owner notice that it will, at a specified time and place, order the goods or things to be forfeited unless good cause to the contrary is shown; and, at that time and place or on any adjournment, the court may order the goods or things to be forfeited unless cause is shown by the owner or some person interested in the goods or things.
6. Subject to the accused mitigation, I find the reasons brought forth by the accused in the determination of the forfeiture of the exhibits to have some merit. However, on the grounds that the license enabling her to conduct the business be brought and availed before the exhibits are returned to the accused herein.
7. I Therefore grant the prayer for restoration of the exhibits to the accused upon fulfillment of the condition of acquisition of a valid license enabling her to conduct her business and earn a living for herself.

It is So ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT**

**15th DAY OF August 2023**

**ALOYCE P. NDEGE**

