



REPUBLIC OF KENYA



**Nderitu v Republic (Criminal Appeal E033 of 2021)  
[2025] KEHC 7690 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7690 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL APPEAL E033 OF 2021**

**A MSHILA, J**

**MAY 30, 2025**

**BETWEEN**

**ANTONY NJAU NDERITU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from the Judgment dated 5th day of May, 2021 of the Hon.  
G. Omodho (SRM) at Kiambu in Criminal Case No. E855 of 2021)*

**JUDGMENT**

**Facts**

1. The Appellant, Antony Njau Nderitu, was charged with the offence of Selling Illicit Brew Contrary to Section 15(1) as read with Section 15(2) of the Kiambu County Government *Alcoholic Drinks Control Act* No.2 of 2018.
2. The particulars of the charge are that on 4/05/2021 at around 11.30am at Kagongo Location, Tinganga Division of Kiambu County the Appellant was found selling illicit brew to wit 455 litres of Muratina in contravention to the said Act.
3. The Appellant pleaded guilty and was convicted on his own plea of guilty and sentenced to pay a fine of Kshs.1,000,000/- in default to serve Two (2) years imprisonment.
4. Being aggrieved by the conviction and sentence, the Appellant filed a Petition of Appeal and Grounds of Appeal which grounds are summarized as follows.
  - i. The Trial Court erred in law and fact in convicting the Appellant on a plea that was unequivocal.



- ii. The Trial Court erred in law and fact in failing to consider that the Charge Sheet was inherently defective.
  - iii. The Trial Court erred in law and fact in convicting the Appellant on the unreliable evidence of the prosecution witnesses.
  - iv. The Trial Court erred in law and fact by not considering the reasonable doubt available and not giving the Appellant the benefit of the doubt.
  - v. The Trial Court erred in law and fact in convicting the Appellant without the prosecution having proved all the ingredients of the offence.
  - vi. The Trial Court erred in law and fact in exercising her discretion in sentencing and applied the wrong principles affecting a first offender and failed to factor in mitigating and aggravating circumstances.
  - vii. The Trial Court erred in law and fact in sentencing the Appellant without requesting for a pre-sentencing report to guide the Court.
  - viii. The sentence was excessive considering the circumstances.
  - ix. The Trial Court erred in law and fact in failing to accord the Appellant his Constitutional right to a fair hearing.
5. The Appellant prayed that the appeal be allowed and the conviction be quashed and the sentence be set aside and the Appellant be set at liberty forthwith.
  6. Hereunder is a summary of the Appellants submissions;

### **Appellant's Submissions**

7. The Appellant submits that the guilty plea was equivocal as the charge and every element were stated to the accused in Kiswahili as well as being read and being explained in Kiswahili but on record they were recorded in English. Reliance was placed on among other cases the case of Kariuki vs R (1954) KLR 809. Failure by the accused to offer mitigation was said to also mean that the accused had no idea what was going on. It was submitted that courts are required to take extra caution in the case of undefended defendants who plead guilty. Reliance was placed in the case of Simon Gitau Kinene vs Republic (2016) eKLR. The court was urged to vacate the guilty plea as the appellant herein was unrepresented and did not understand the consequences of his plea. Further, the appellant submits that the law on which the appellant was charged had not been gazetted in 2021 when the appellant was presented in court thus the offence was at the time non-existent hence the charge sheet was defective for non-disclosure of an existent offence. Reliance was placed in the case of County Government of Kiambu vs Kariuki & 3 others (2021) KECA 351 (KLR). Lastly the trial court was said to have failed to explain to the appellant the importance of mitigation as such none was offered and that no pre-sentencing report was called for, hence the appellant submits that the sentence imposed was excessively severe. Reliance was placed in the case of Elisha Kiplating vs Republic (2021) eKLR. The court herein was urged to allow the appeal with costs.

### **Issues For Determination;**

8. After taking into consideration the submissions made by the Appellant and in the absence of any written submissions by the Respondent this court finds the following issues for determination;



- i. Whether the Appellant was tried and convicted for a non-existent offence and whether the Trial Court erred in law and fact in failing to consider that the Charge Sheet was inherently defective
- ii. Whether the Plea taken was unequivocal.
- iii. Whether the sentence was harsh and excessive in the circumstances.

### **Analysis**

9. This Court being the first appellate court it is incumbent upon it to re-evaluate and re-assess the evidence on record and arrive at its own independent conclusion bearing in mind that this court did not have the opportunity or benefit of hearing and seeing the witnesses as they testified. Refer to the case of *Okeno vs Republic* (1972) EA 32.

Whether the Appellant was tried and convicted for a non-existent offence; and whether the Trial Court erred in law and fact in failing to consider that the Charge Sheet was inherently defective

10. The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The Appellant contends that the trial court erred in failing to take this into consideration and further and in particular it failed to take into consideration the binding decisions of the High Court and the Court of Appeal where the findings were that County legislations must be first published in the Kenya Gazette for the laws to acquire legitimacy.
11. This Court had occasion to visit the website referred to in the Appellants written submission and found the Gazette Notice that operationalized the Kiambu County *Alcoholic Drinks Control Act* of 2018. The Act was amended in 2021 with the date of assent stated thereon as being 3/03/2021 and the date of Commencement indicated as being 8/03/2021. This piece of legislation having been published in the Kenya Gazette had acquired legitimacy at the time the Appellant was charged.
12. The Charge Sheet reads that the Appellant was arrested on the 4/05/2021 and arraigned in court on 5/05/2021. This Court is satisfied that the Trial Court did not err in law and fact in its findings and is further satisfied that the Appellant was properly convicted for a known and existing offence.

### **Whether the Plea of Guilty was equivocal**

13. The principle of law is that the offence should be disclosed and stated in a clear and unambiguous manner in the Charge Sheet so that the accused may be able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence.
14. The applicable law is found at Section 137 of the *Criminal Procedure Code* which deals with the rules for framing of charges or an information. The Section provides that:-

SUBPARA i.

The statement of offence shall describe the offence shortly in the ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence.

SUBPARA ii.

After the statement of the offence, particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary: Provided that where any rule of law or any Act



limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require more particulars to be given than those so required...”

15. A charge must therefore be clear and easy to understand. In as far as possible the use of technical language in a charge ought to be avoided. An accused person must be accorded an opportunity to understand what he/she is facing before court.
16. Having perused the charge sheet, it was clear that he was found selling 455 litres of Muratina. The quantity was large and it was specified and it is this Courts considered view that all the rules for drafting a charge sheet were followed. The fact is that the accused understood the charge he was facing.
17. As such this court is satisfied that the Charge and the contents of Statement of Facts sufficiently disclosed and established an existing offence and the nature of the offence that the Appellant was faced with; and finds that Appellant knew the exact offence that he was alleged to have committed and faced with and did not hesitate to seek any explanation and pleaded “GUILTY”. His plea is found to be unequivocal.
18. This ground of appeal has no merit and is disallowed.

**Whether the sentence imposed was harsh and excessive in the circumstances.**

19. The Appellant was convicted on his own Plea of Guilty and the sentence meted by the trial court was a fine of One (1) Million or in default a custodial sentence of two (2) years imprisonment; and the appellant’s contention was that this sentence imposed was harsh, oppressive and excessive.
20. The scope of this court’s appellate powers is to examine the evidence on record so as to satisfy itself as to the propriety and legality of the sentence and that it has been made in accordance with the law. The applicable section in this instance is found at Section 15 (2) of the Kiambu County *Alcoholic Drinks Control Act*; which section reads as follows;

“Any person who .....is liable to a fine not exceeding three (3) Million or imprisonment for a term not exceeding Three (3) years.”
21. The maximum fine is Kshs. Three Million (3,000,000/-) and the maximum sentence provided by the above section is three (3) years imprisonment; the record reflects that the trial court invited the appellant to mitigation and took into consideration the fact that the appellant was a first offender and this factor was confirmed by the prosecution. It is therefore evident that the trial court took into account the provisions of the law when passing sentence.
22. In this instance, the Appellant has not demonstrated that the trial court erred in imposing the fine of Kshs. One Million (1,000,000/-) or in default a term of two (2) years imprisonment or committed any illegality, impropriety or mistake when sentencing him. The court record reflects that the trial court did not overlook any material factor when passing sentence and took into consideration the circumstances of the case and the mitigating factors brought out by the Appellant. When invited to mitigate; the record reflects that the trial court took into consideration the fact that the Appellant was a first time offender and that he was remorseful. The sentence is as provided by the law and is found to be legal and that there is no reason found that warrants interference with it as it is less than the maximum prescribed by law.
23. This Court is satisfied that when imposing the sentence the trial court correctly exercised its discretion and meted out an appropriate sentence.



24. The sentence is found to be legal and as provided by the law and this court finds that the sentence imposed was in the circumstances not manifestly harsh and excessive and it therefore does not warrant interference by this court. Refer to the case of *Wanjema v Republic* (1971) EA 493.
25. For the forgoing reasons this court is satisfied that this ground of appeal has no merit and it is hereby dis-allowed.

### **Findings And Determination**

26. For the foregoing reasons this court makes the following findings and determinations;
  - i. The appeal is found lacking in merit in its entirety and it is hereby dismissed.
  - ii. This Court finds that the Appellant was convicted for an existing offence and the Plea is found to be unequivocal.
  - iii. The court finds that the trial court did not err in imposing the fine and default custodial term of two (2) years imprisonment and finds no good reason that warrants the interference with the sentence imposed which is found to be legal.
  - iv. The fine and default sentence imposed are hereby affirmed.

Orders accordingly.

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 30<sup>th</sup> DAY OF MAY, 2025.**

**A. MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Mrs. Fundi - For the Appellant

Macharia h/b for Gacharia - For the State

Appellant - Present

