



REPUBLIC OF KENYA



KENYA LAW
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**Wanjiku v Republic (Criminal Revision 142 of 2024)
[2025] KEHC 7454 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION 142 OF 2024**

TW OUYA, J

MAY 29, 2025

BETWEEN

MARGARET WANJIKU APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from the original conviction and sentence of the Chief
Magistrate's Court at Thika Criminal Case no. 2048 of 2024
delivered on the 1st day of August, 2024 by Hon. D. Milimu, SRM)*

RULING

Introduction

1. The Applicant was charged with the offence of being in possession of an alcoholic drink that does not conform to the requirements of Section 27 (1) (b) as read with Section 27 (4) of the *Alcoholic Drinks Act*, CAP 121. She was convicted and sentenced to a term of nine(9) months' imprisonment without the option of a fine following her plea of guilt. The facts of the case are that on 5th June 2024 at 2100 hours in Kiang'ombe area, police from Kiambu got a report that the Appellant was selling chang'aa. She was apprehended and arrested. She was found with 25 litres of chang'aa in a 20 litres jerrican and a 5 litre jerrican which were produced as exhibit 1.
2. Dissatisfied with the sentence, the Applicant moved this honourable court via a Chamber Summons Application dated 20th August 2024, along with an affidavit from Margaret Wanjiku, of the same date, seeking the supervisory jurisdiction of this honorable court on the grounds that she is a first offender, very remorseful, and deserving of a second chance. She specifically asks the court to substitute the custodial sentence with a non-custodial sentence because she is ill and wishes to care for her ailing grandmother.



3. The Application has been opposed by the Respondent via an affidavit dated 21st November 2024 and sworn by Esther Torosi, Senior Prosecution Counsel in the Office of the Director of Public Prosecutions. The essence of the Respondent's case is that the Appellant has neither argued nor suggested that the sentence imposed is manifestly harsh and excessive, illegal or improper or that the trial court acted on the wrong principle or omitted relevant factors, or considered irrelevant factors in sentencing, or that the proceedings were irregular or in violation of her rights or fundamental freedoms.
4. The Respondent further pointed out that the Appellant was a repeat offender, having been convicted for a similar offence and in 553/2024 where she was fined. Nine(9) months' imprisonment was thus appropriate and legal in the circumstances as a deterrent against the Appellant.

Analysis

5. This court's Revisionary jurisdiction is exercised under the provisions of section 362 of the [Criminal Procedure Code](#) which provides:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

6. The record confirmed that the Applicant was convicted on her own plea of guilty and sentenced to nine months imprisonment. The record also showed that the prosecution brought to the attention of the court the fact that the Applicant was a repeat offender having been convicted and fined in 553/2024.

7. This being a revision for a sentence, the applicable law is section 364 (1) (a) of the [Criminal Procedure Code](#) which provides:

“In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence.”

8. In the case of [Joseph Nduvi Mbuvi v Republic](#) [2019] eKLR, Odunga J. (as he then was) held that:-

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissionsAs was stated by the High Court of Malaysia in *Public Prosecutor v Mubari Bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735:-“The powers of the High Court in revision are amply provided under section 325 of the [Criminal Procedure Code](#) subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.

9. The offence under section 27 of the [Alcoholic Drinks Control Act](#) No. 4 of 2010 provides thus:

“ 27.

(1) No person shall—



- (a) manufacture, import or distribute; or
 - (b) possess, an alcoholic drink that does not conform to the requirements of this Act.
- (2) Subsection (1) shall not apply to a person who—
- (a) is authorized under this Act to be in possession of the alcoholic drink; or
 - (b) has possession of the alcoholic drink in a premises licensed under this Act.
- (3) The manufacture or distillation of all spirituous liquor prior to this Act referred to as Chang’aa shall conform to the prescribed standards or the requirements of this Act.
- (4) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding five years, or to both.”

10. However, the principle of sentencing in case of fines is set out in of the [Kenya Judiciary Sentencing Policy](#) at paragraph 2.7.5, p.21 that –

“Where the option of a fine is provided in the law, the court must first consider it before proceeding to impose a custodial sentence. If in the circumstances a fine is not a suitable sentence, then the court should expressly indicate the reasons why it is not appropriate to impose a fine..”

11. The Court of Appeal in [Thomas Mwambu Wenyi v Republic](#) [2017] eKLR cited the decision of the Supreme Court of India in [Alister Anthony Pereira v State of Maharesbtra](#) at paragraph 70-71 where the court held the following on sentencing:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

12. As highlighted by the Respondent, the trial court noted that the pre-sentence report dated 16th July 2024 was not favorable to the Appellant as she was a repeat offender having been previously convicted for a similar offence 553/2024 where she was fined. Moreover, the presentencing report itself specified



that the Appellant herself expressly stated that she had no interest in serving a non-custodial sentence. Therefore, the option of a fine was inappropriate in the circumstances.

Determination

13. In light of the provisions of section 27 of the *Alcoholic Drinks Control Act* No. 4 of 2010, it is my finding that the trial court issued an appropriate sentence to the Applicant.

Accordingly, the sentence of the trial court is upheld.

14. I have noted that the Applicant was sentenced on 1st August 2024 and has since served her sentence (being nine months imprisonment). Therefore, the Applicant is set at liberty forthwith unless otherwise lawfully held.

It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY ON 29TH MAY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....Absent

For Respondent.....Ms Torosi

Court Assistant.....Doreen

