

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SONGEA DISTRICT REGISTRY
AT SONGEA

MISCELLANEOUS CRIMINAL APPLICATION NO. 1 OF 2022

(Originating from Criminal Case No. 67 of 2022 Tunduru District Court at Tunduru)

ALUS KILAMBO.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date of last Order: 17/10/2022

Date of Ruling: 21/10/2022

MLYAMBINA, J.

This application has been made by way of chamber summons under *Section 372 and 373 of the Criminal Procedure Act [Cap 20 Revised Edition 2019]* and it is supported with the affidavit of Alus Kilambo, the Applicant. Basically, the Applicant is seeking for revision of the conviction and sentence of three years' imprisonment issued by Tunduru District Court at Tunduru on 24th April, 2022. The Applicant was found guilty of an offence of unlawful possession of traditional liquor contrary to *section 30 of the Control of Distillation Act [Cap 324 R.E.2019]*.

The major reason that can be deduced from the supporting affidavit is only one: That, the plea of guilty was an equivocal hence the subordinate Court failed to consider it.

On 17th day of October, 2022 when the application came for hearing, learned State Attorney Venance Mkonongo did not object the application on ground that the sentence issued to the Applicant is severe.

I have given consideration to the reason stated by the Applicant in her supporting affidavit. I have further gone through the records of the trial Court, it is in record that the Accused plea was unequivocal. She pleaded:

"It is true I was found in possession of 40 litres of traditional liquor."

It is the findings of this Court that the Applicant has no good reason for applying for revision of the conviction on unequivocal plea of guilty. She could even not file appeal on the said ground. The same position was reached by the Court of Appeal in the case of **Michael Adrian Chaki v. The Republic**, Criminal Appeal No. 399 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported); **Laurent Mpinga v. The Republic** [1983] TLR 166; and **Karlos Punda v. The Republic**, Criminal Appeal 153 of 2005, Court of Appeal of Tanzania at Mtwara (unreported). In the case of **Karlos Punda's (supra)**, the Court of Appeal outlined the circumstances in which the Appellant who was convicted in his own plea of guilty can appeal on the conviction entered against him as follows:

1. If the plea was imperfect, ambiguous or unfinished;

2. If the Appellant pleaded guilty as a result of mistake or misapprehension;
3. If the charge laid at the Appellant's door disclosed no offence known to law; and
4. If upon the admitted facts the Appellant could not in law have been convicted of the offence charged.

None of the above reasons can be found or be inferred in the instant application for consideration by the Court.

I have further gone through *section 30 of the Control of Distillation Act [supra]* to assess whether the sentence was lawful. I noted, *section 30 [supra]* gives a maximum punishment of five years imprisonment. It provides:

Any person, other than a licensee of a distiller, who has moshi in his possession shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Having gone through the sentence and the violated provision of the law, I have the following findings: *First*, the Applicant was sentenced to three years' imprisonment in jail which can be substituted to Community Service in terms of *Section 3 of the Community Service Act No. 6 of 2002. Second*,

the Applicant is a woman blessed with six issues who are depending on her. Any sentence imposed to her must be in consideration of those issues too. *Three*, upon assessing the Applicant, it appeared to the satisfaction of the Court that she is being remorseful. *Four*, instead of being imprisoned in jail, the Applicant can be at the best supervision and rehabilitation plan of a Village Executive Officer (VEO) of Chingulungulu Village. *Five*, if the Applicant will be allowed to save Community Service as the remaining portion of her sentence, it will reduce Government running costs and the congestion in Prison. *Six*, the Applicant is not dangerous to her Village Community. It appears the possession of 40 litres traditional liquor was orchestrated by tough life condition of feeding and taking care of her six issues.

For the above listed reasons, I find the Applicant is suitable to serve community service. As such, the three years' imprisonment in jail issued by the trial Court is substituted with community service.

In terms of *Section 4 (1) of the Community Service Act (supra)*, the Applicant shall report at 7:00am and sign attendance register to the supervising Village Executive Officer of Chingulungulu Village, or in case of his absence, to any other mandated Social Inquiry Officer of the same office for assignment of work; and perform general cleaning at the Chingulungulu Village Office for the period of two hours three times a week, as she may be

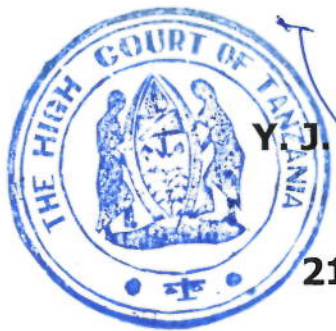
instructed by the supervising officer; and report to the supervising officer any change of address which may occur from time to time.

Further, the Applicant shall be required to adhere to all the orders which shall be issued to her through the prescribed form made under the Authority of *Section 3 (a) and (b) of the Community Service Act, No. 6 of 2002*.

Also, in terms of *Section 4 (2) of the Service Community Act (supra)*, the supervising Chingulungulu Village Executive Officer is ordered, as far as practicable, to avoid giving instructions which conflict with the Applicant's religious beliefs.

Moreover, in terms of *Section 12 (3) of the Community Service Act (supra)*, the Chingulungulu Village Executive Officer shall *inter alia*: *First*, oversee the work and progress of the Applicant. *Second*, ensure that Community Service orders are compiled with and that the scheme works smoothly. *Third*, apply to the court for review of order, in case of necessity. *Fourth*, ensure that safety conditions are satisfactory for both the Community and to the Applicant serving under Community Service orders. *Fifth*, maintain confidentiality of information on or relating to the Applicant. *Sixth*, undertake counselling of the Applicant for rehabilitation. *Seventh*, keep an up-to-date record of the Applicant performance and appraisal of the same. *Eighth*,

submit periodic reports to appropriate or relevant Community Service Orders Committees and the Co-ordinator in respect of the Applicant. It is so ordered.

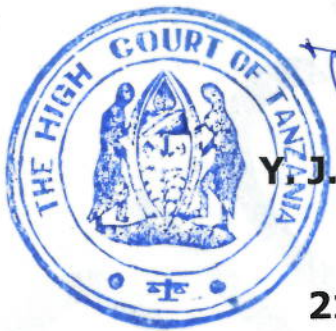


Y. J. MLYAMBINA

JUDGE

21/10/2022

Ruling delivered and dated 21st day of October, 2022 in the presence of the Applicant and learned State Attorney Venance Mkonongo for the Respondent.



Y. J. MLYAMBINA

JUDGE

21/10/2022