Wangiri v Republic (Criminal Revision E137 of 2024)
[2024] KEHC 13107 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13107 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

CRIMINAL REVISION E137 OF 2024

LM NJUGUNA, J

OCTOBER 30, 2024

BETWEEN

NANCY WANGIRI ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The applicant has filed an undated notice of motion seeking review of the sentence of 7 years imprisonment imposed by the High Court in Embu in Criminal Case Number 22 of 2014 to a lesser or non-custodial sentence. The applicant was convicted of the offence of murder contrary to section 203 as read together with section 204 of the *Penal Code*.

2. It was her case that she is a first offender and she regrets the offence. She stated that she and her spouse are both serving sentences arising from the same offence. That she has been rehabilitated through her time in prison and she has learned useful crafts that will help her to be a better citizen going forward.

3. The respondent opposed the application through grounds of opposition, stating that the mitigating factors presented by the applicant do not constitute grounds for resentencing neither does the application meet the requirements for revision as contemplated under section 362 of the *Criminal Procedure Code*. That the court lacks jurisdiction to review its own order and sentence since it became functus officio after delivering the judgment.

4. Through its written submissions, the respondent rehashed the averments made in the grounds of opposition and placed reliance on the case of *Lisengere v Republic* [2022] KEHC 14503 (KLR).

5. From the foregoing, the issue for determination is whether this court should review the sentence meted out to the appellant.

6. The High Court's supervisory jurisdiction in criminal cases is established under Section 362 of the *Criminal Procedure Code* as follows:

> "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."

7. In the Malaysian case of *Public Prosecutor v Muhari bin Mohd Jani and another* [1996] 4 LRC 728 at 734, 735 it was held:

> "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...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammeled and free, so as to be fairly exercised according to the exigencies of each case".

8. The kind of supervisory jurisdiction to be applied under section 362 of the Criminal Procedure Code is limited to the sub-ordinate court's findings, sentences, orders and regularity of any proceedings and can only be exercised by the High Court. However, this revision application arises from a murder trial conducted at the High Court, which has original jurisdiction in that regard. Further, there is no provision allowing or prohibiting the High Court from revising its own findings. Clause 4.8.18 of the *Judiciary Sentensing Policy Guidelines, 2023* provides:

> "Resentencing cases shall be handled by the 'Sentencing Court' – e.g., if the last court that sentenced the convict was the Court of Appeal, then the resentencing hearing shall also be handled at the Court of Appeal and not a lower court. This applies mutatis mutandis to cases in either superior or inferior courts."

9. Having been convicted, the applicant was sentenced to 7 years imprisonment and at the time of sentencing, the court took into account the period of 3 months and 23 days that the applicant had spent in custody in the pendency of the trial. It ordered that the time be taken into account when computing the sentence. As of today, the applicant has served 2 years and 10 months of the sentence, and counting. On 27th July 2023, this court considered a request through prison decongestion program for sentence review and denied the same, noting that the balance of the sentence was more than 3 years.

10. The applicant was sentenced alongside her spouse for the offence which occurred from the same incident. Through this application, she stated that she has learned knitting of sweaters and soap making skills and that she has since reformed and she regrets the offence. She urged the court to consider a non-custodial sentence or a lesser sentence also because she is a first offender. I have perused the trial file and noted the applicant's participation in committing the offence. She was sentenced among 4 other offenders including her spouse.

11. It is my view that given the nature of the offence, the sentence meted out to the applicant was reasonable in the circumstances, noting that the statutory prescribed sentence for the offence of murder is death.

12. Therefore, I find that the application lacks merit and the same is hereby dismissed.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 30TH DAY OF OCTOBER, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the Respondent