



**Jager v Republic (Criminal Revision E002 of 2023)
[2023] KEHC 21168 (KLR) (Crim) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E002 OF 2023
DR KAVEDZA, J
JULY 31, 2023**

BETWEEN

ELIZE DE JAGER APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is a chamber summons application (undated) by the applicant, wherein she seeks revision of the 16-year sentence she is currently serving. She prays for a lesser sentence and urged the court to consider that she has been in prison for 9 years.
2. The applicant was initially charged, convicted and sentenced to life imprisonment in JKIA Criminal Case No 51 of 2016 for the offence of trafficking in narcotic drugs contrary to section 4(a) of the *Narcotic Drugs and Psychotropic Substances Control Act*.
3. Aggrieved by the conviction and sentence, she appealed to the High Court in HC criminal appeal No 149 of 2017 wherein her conviction was affirmed by Hon Kimaru J. The applicant’s sentence was however substituted with a fine of Kshs 53,998,600 in default, to serve one-year imprisonment, and a further sentence of 15-years imprisonment, with effect from November 22, 2014, when she was arrested.
4. The power of this court to exercise its revisionary jurisdiction is founded under section 362 of the *Criminal Procedure Code* (cap 75) Laws of Kenya which provides that:

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.

Article 165(6) of the Constitution provides that:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

5. At this juncture, it is important for this court to consider its jurisdiction to review a sentence imposed by a court of concurrent jurisdiction. The first appellate court herein (Hon Kimaru J) is a court of concurrent jurisdiction with this court. It therefore follows that this court lacks jurisdiction to review the said decision as doing so would be tantamount to sitting as an appellate court on the decision of Hon Kimaru J. The only remedy available to the applicant is to file an appropriate appeal to the Court of Appeal.
6. Notwithstanding the foregoing, my jurisdiction as the Chairperson National Community Service Orders (CSO) is limited to applicants/offenders who have been sentenced to three (3) years imprisonment and below. In addition, the Chief Justice (CJ) *vide* the memo dated December 7, 2022 directed that the High Court may conduct sentence reviews for convicted prisoners who are either serving sentences of less than three (3) years or those serving longer sentences but have a balance of three (3) years and below to serve.
7. In this instant case, I note that the applicant has only served 9 years and has a balance of 7 years to serve. She is therefore not eligible for early release and I decline to exercise my discretion at this juncture.
8. In view of the foregoing, the application for revision of the sentence is dismissed.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 31ST DAY OF JULY 2023.

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D. KAVEDZA

JUDGE

In absence of parties.

