



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL REVISION NO. 1 OF 2019

REPUBLIC.....APPLICANT

VERSUS

PHILIP KIPNGENO LANGAT.....RESPONDENT

RULING ON REVISION

1. This Ruling is in respect of an application by the Prosecution seeking revision of sentence in Sotik Principal Magistrates Court Criminal Case No. 12 of 2017 Republic Vs. Philip Kipngeno Langat (now Respondent).

2. The Respondent, was charged with the offence of Rape contrary to Section 3 (1) (b) of the Sexual Offences Act. In the Judgment dated 28th December 2018, the trial court (Hon Omwansa PM) found the Respondent guilty of the offence of Rape and convicted him under Section 215 of the Criminal Procedure Code. In passing the Sentence, the trial court fined the Respondent Kshs 100,000/= and in default to serve 10 years in prison.

3. The Prosecution promptly sought revision of the said sentence vide letter to the High Court dated on 2nd January 2019 on grounds that the sentence imposed by the Honourable trial court was illegal and unlawful. They prayed that this court make the necessary orders as provided under Section 364 of the Criminal Procedure Code upon satisfying itself as to the correctness, legality or propriety of the sentence.

DETERMINATION.

4. This court's Revisionary jurisdiction is exercised under the provisions of Section 362 of the Criminal procedure code which states: -

“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”.

5. For this Revision, the powers of this court are provided for under 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”.

6. In the persuasive authority in **Joseph Nduvi Mbuvi V Republic (2019) eKLR** Odunga J. held that: -

“In my view, the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal. In other words, parties should not argue an appeal under the guise of a revision. It is for this reason that the decision whether or not to hear the parties or their advocates is discretionary save for where the orders intended to be made will prejudice the accused person. As was stated by the High Court of Malaysia in PUBLIC PROSECUTOR vs. MUHARI 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...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 untrammelled and free, so as to be fairly exercised according to the exigencies of each case”.

7. The Prosecution submitted that the Sentence imposed by the trial court was illegal as the Sexual Offences Act did not provide for a fine for the offence and that the minimum sentence was 10 years under the Act. In considering this revision, this court granted the Respondent an opportunity to be heard and to make any submission and he failed to do so.

8. I have, as required by law, looked at the record of the trial court. Indeed, the case went into full trial and the court rendered Judgment and imposed the impugned sentence.

9. Section 3(3) of the Sexual Offences Act provides that a person guilty of the offence of Rape is liable upon conviction to a term of not less than ten years but which may be enhanced to imprisonment for life. A fine is neither provided for nor contemplated. The Sentence was therefore unlawful and illegal. It cannot be allowed to stand. The trial court in passing the aforementioned Sentence acted against the law.

10. The Respondent filed an appeal being Criminal Appeal No.1 of 2019 which has been heard and is pending Judgment. The Appellant must however, serve the lawful sentence now imposed pending the determination of the appeal.

11. I set aside the sentence of a fine of Kshs. 100,000/= and in default 10 years' imprisonment imposed by Hon.Omwansa and substitute therefor a sentence of 10 years' imprisonment as required by Section 3(3) of the Sexual Offences Act.

12. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF APRIL, 2022.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the parties. The Deputy Registrar of the Court to effect service accordingly.