



REPUBLIC OF KENYA



**Republic v Koech & another (Criminal Revision 52 of 2019)
[2022] KEHC 12227 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 12227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL REVISION 52 OF 2019**

**RL KORIR, J
JUNE 30, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

VINCENT KIPLANGAT KOECH 1ST RESPONDENT

CHARLES KIPRONO 2ND RESPONDENT

RULING

1. The Respondents, Vincent Kiplangat Koech and Charles Kiprono were charged with the offence of Robbery with Violence contrary to Section 296 (2) of the [Penal Code](#).
2. In the Judgment dated 21st June 2019, the trial court found the Respondents guilty of the aforementioned offence and convicted them. In passing the Sentence, the trial court fined the Respondents twenty thousand shillings (Kshs 20,000 each and in default to serve 5 years in prison.
3. In an application for the Revision of the Sentence filed and dated on 12th July 2019, the prosecution prayed that this court make the necessary orders as provided under Sections 362 and 364 of the [Criminal Procedure Code](#).
4. This court summoned the Respondents to appear before it to be heard on the Revision but they failed to honour the Summons. The court issued warrants of arrest but such warrants remain unexecuted to date.
5. The Prosecution submitted that the evidence on record established that the Respondents waylaid the Complainant and violently robbed him of his shoes and that they injured him in the process. That the trial court found them guilty of the offence of Robbery with Violence. It was their further submission that the law provided for the maximum penalty to be a death sentence.



6. It was the Prosecution’s submission that the Social Inquiry Report indicated that the two Respondents were social misfits and unfit for non-custodial Sentences.

Determination.

7. 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”.

8. 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”.

9. In the persuasive authority of *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”.

10. In *Bernard Kimani Gacheru Vs Republic* (2002) eKLR, the Court of Appeal stated that: -

“It is now settled law, following several authorities by this court and the high court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account the wrong material,



or acted on the wrong principle. Even if, the appellate court feels that the sentence is heavy and that the appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist”.

11. In this case however, it is apparent that the trial court overreached its discretion when it meted out a Sentence not provided for in law.
12. As earlier stated, the trial court fined each Respondent Kshs 20,000 and in default, they would each serve 5 years’ imprisonment. The trial court in passing the aforementioned Sentence acted against the law. Section 296 (2) of the Penal Code states that:-

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death
13. There is nowhere in the Penal Code where it contemplates a fine for the offence of Robbery with Violence. The Sentence was therefore unlawful and illegal.
14. I exercise my revisionary power to set aside the Sentence issued by the trial court and substitute it with the Sentence provided in law. Each accused is sentenced to suffer death in accordance with the law.
15. I direct that the two Respondents, Vincent Kiplangat Koech and Charles Kiprono be arrested and presented before this court for issuance of warrants to serve the proper Sentence.
16. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 30TH DAY OF JUNE,2022

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Muriithi for the State, No appearance for the Appellant and Kiprotich (Court Assistant).

