



**Liban & another v Republic (Criminal Revision E418 of 2021)  
[2022] KEHC 11326 (KLR) (Crim) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11326 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E418 OF 2021  
DO OGEMBO, J  
JULY 26, 2022**

**BETWEEN**

**ALI MUTANO LIBAN ..... 1<sup>ST</sup> APPLICANT**

**ABDINASIR WALDE HAILE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The 2 applicants Ali Matano Liban and Abdinasir Walde Haile filed separate revision applications before this court, being High Court Criminal Revision Application Nos E417/2021 and E418/2021. The 2 applications are similar in all respected arising from the same trial conviction and sentence of the 2 applicants in Milimani, Criminal case No 1144/2019. The 2 applicants were accordingly heard as one in this file, E418/2021.

The applicants have sought for the following main prayers;

- a) That this honourable court do find it prudent and review the custodial sentence imposed on the applicants of 5 years imprisonment to a non-custodial sentence and or consider reviewing the fine to a sum of Kshs 300,000/= which the applicants can raise.
2. The affidavits of the applicants in support of this application depone that the applicants were sentenced to serve 5 years imprisonment in default of paying a fine each of Ksh 30,000,000/=. That the said fine is excessive. In the said affidavits the applicants have also pleaded that they are responsible for their aged parents and that they both suffer serious health issues. Basing their plea on their youthful ages,



they have pleaded for leniency so that they may take care of their dependents and that they be given another chance.

3. This application was canvassed by way of written submissions. It was submitted by the applicants, that they faced a charge of Trafficking in persons contrary to section 3(1)(d) of the [Counter Trafficking in Persons Act](#), No 8 of 2010. The court was urged to consider the peripheral role the applicants played. That the 2 were merely the owner and driver who may not have known the purpose of the transportation. That they did not threaten the victims, abduct them, carry out any fraud on them, deceive them and so do not deserve the stiffest of the penalty. They relied on the case of [John Kariuki Maringa v Republic](#) [2019]eKLR, where it was held;

“Where the option of a non-custodial sentence is available, a custodial sentence should be reserved for a case in which the objectives of sentencing cannot be met through a non-custodial sentence. The court should bear in mind the high imprisonment and seek to impose a sentence which is geared towards steering the offender from crime. In particular, imprisonment of petty offenders should be avoided as the rehabilitative objection of sentencing is rarely met when offenders serve short sentences in custody. Further short sentences are disruptive and contribute to re-offending.”

4. It was further submitted that section 3(5) of the Act provides for a non-custodial sentence, and that the huge fine is not affordable and would only destroy their young lives.
5. On the respondent’s side, it was submitted the sentence herein was legal and proper. That applicants have not shown any illegality, incorrectness or impropriety on the sentence as to warrant a revision of the same. That in any case, the sentence was lenient as the law provides for a maximum of 30 years imprisonment and upto Kshs 30 million in fine. Counsel place reliance on the well known case of [Benard Kimani Gacheru v Republic](#), Criminal Appeal No 188/2000.
6. It was urged by the respondent that this application be dismissed. This is an application for revision brought under the revisionary powers of the court under section 362 of the [Criminal Procedure code](#). 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 proceeding of any such subordinate court.”

7. Section 364 of [Criminal Procedure Code](#), declare the powers High Court may exercise on revisionary as being the same as those on appeal (section 354, 357 and 358).
8. In this case, the 2 applicants faced a charge of trafficking in persons contrary to section 3(1)(d) as read with section 3(5) of the [counter trafficking in persons Act](#), No 8 of 2010. The sentence section 3(d) of the Act states;

“A person who traffics another person for purposes of exploitation commits an offence and is liable to imprisonment for a term of not less than 30 years or to a fine of not less than 30 million shillings or to both and upon subsequent conviction, to imprisonment for life.”

9. The above provision dictates the maximum sentence the court may meter out. None other than the Supreme Court of Kenya has given directions and opinions that even in the event a statute stipulates a maximum or minimum sentence, the discretion of the court in meted out appropriate sentence is not



ousted (*Muruatetu case*). In effect therefore the trial court ought to consider the specific circumstances of each case before arriving at an appropriate sentence. I have considered the proceedings herein and I am convinced that in sentencing the applicant's, the trial court ought to have considered the specific circumstances of this case including:-

- i. Whether the applicant's exploited the complaints.
  - ii. Whether the applicants gained any undue profit in this venture or had intention to profit unduly out of the venture.
  - iii. Whether the applicants were the real major or peripheral participants. In this venture i.e driver and owner of the motor vehicle.
  - iv. Ages of the applicants.
  - v. Whether the applicants were remorseful of their action.
  - vi. Possibilities of reform
  - vii. Any previous negative criminal records of the applicants.
10. From the sentence proceedings, the trial court did not give deep mind to the specific circumstances of this case, some of which have been reproduced above. The trial court, I am persuaded, acted on the basis that its hands were tied on the issue of sentence. With respect, to this extent the trial court erred with the resultant being that the sentence meted out on the applicant is excessive in the circumstance. It is because of this impropriety, therefore, that I find merit in this application by the 2 applicants.
11. In the circumstances, I allow the applicants, Nos E417/2021, and E418/2021, (argued jointly in E418/2021), dated and filed on December 20, 2021. the sentence of the trial court dated December 9, 2021 is hereby accordingly revised. Both 1<sup>st</sup> and 2<sup>nd</sup> applicants are sentenced to each pay a fine of 1 million. In default, each shall served 3 years imprisonment. This sentence shall run from the date of sentence on December 9, 2021. Right of appeal 14 days.

**D. O. OGEMBO**

**JUDGE**

**26.7.2022**

**Court:**

**RULING READ OUT IN OPEN COURT IN PRESENCE OF THE APPLICANTS, MR. WANGIRA FOR APPLICANTS AND MS. CHEGE FOR THE STATE.**

**D. O. OGEMBO**

**JUDGE**

**26.7.2022**

**From: High Court Appellate Side**

**To: @g.k. Nairobi Remand And Allocation Maximum Prison**

**INFO: PHQ.**

**27<sup>th</sup> July 2022**

**Hccr Revision. No. E418 Of 2021**



**High Court Criminal Revision No. E418 Of 2021 Originating From The Chief Magistrate's Court At *Milimani Criminal Case No. 1144 Of 2019*. Applicant Nba1752/2021/ls Ali Mutano Liban And Nba/1754/2021/ls Abnasir Walde Haile Both 1<sup>st</sup> And 2<sup>nd</sup> Applicants Are Sentenced To Each Pay A Fine Of 1 Million. In Default, Each Shall Served 3 Years Imprisonment. This Sentence Shall Run From The Date Of Sentence On 9.12.2021. Right Of Appeal 14 Days.**

**DEPUTY REGISTRAR**

