



**Gichuhi v Republic (Criminal Revision E020 of 2022)
[2022] KEHC 14803 (KLR) (19 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E020 OF 2022
GL NZIOKA, J
OCTOBER 19, 2022**

BETWEEN

SAMUEL KABUE GICHUHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was arraigned before the Senior Principal Magistrate’s Court at Engineer charged *vide* Criminal Case No E3092 of 2021, with the offence of being in possession of; forest produce contrary to section 64 (1) (a) as read with section 64 (2) of the *Forest Conservation and Management Act* No 34 of 2016. The particulars of the charge are as per the charge sheet.
2. He pleaded guilty and was convicted on his own plea of guilty and sentenced to pay a fine of; Kshs 100,000 or in default two (2) years imprisonment. However, he seeks for sentence review based on the notice of motion application filed in court on March 3, 2022, in which he prays that, the custodial sentence in question, be reduced or converted to a non-custodial sentence.
3. He relies on the document he describes as “mitigation grounds” in which he states as follows-
 - a. That, I am a first offender.
 - b. That, I pleaded guilty of the offence.
 - c. That, I am remorseful of my offence.
 - d. That I have learnt to be a law-abiding citizen.
 - e. That, I am from a poor family background.
 - f. That I have acquired farming skills as part of my rehabilitation.



- g. That, I would like to go and use the above skills in catering for my family as I build the nation.
4. The respondent did not file any response to the application nor was a probation officer's report filed as directed, and similarly the parties did not file submissions though ordered to.
5. I have considered the application and note that, the law that governs the revisionary power of the High Court is provided for under sections 362 of the [Criminal Procedure Code](#) which states 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.”
6. Further the provisions of; section 364 of the [Criminal Procedure Code](#) states as follow: -
- “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—
- (a) 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;
 - (b) In the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
- (5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
7. It is clear from the above provisions that, the court will only exercise its revisionary powers where, the impugned sentence is either incorrect, illegal or improper. The objective of revisionary jurisdiction is to set right a patent defect or error of jurisdiction or law. This jurisdiction will only be involved where the decision under challenge is; grossly onerous, there is no compliance with the provisions of the law, or the finding re-ordered are based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.
8. It therefore follows that, in exercise of revision powers, it is not the responsibility of the High Court to take into account the benefit of the evidence, it merely has to see if the provisions of the law have



been properly adhered to by the court whose order is the subject of the revision, as held in; Major SS Khanna vs Brig FJ Dillon 1964 AIR 497, 1964 SCR (4) 409).

9. It is also noteworthy therefore that, the revision jurisdiction does not allow the court to interfere and correct errors of facts, or of law when the order is within the jurisdiction of the subordinate court; even if the order is right or wrong, or in accordance with the law, unless it exercised its jurisdiction illegally or with material irregularity. Reference is made to the cases of; Wesley Kiptui Rutto & another vs Republic [2017] eKLR, Republic vs Everlyne Wamuyu Ngumo (2016) eKLR, Public Prosecutors vs Muhavi Bi Mond Jani & another 1996 4 LRC 728, 743-5, DPP vs Samuel Kimuche.
10. Having considered the application I find that, the offence with which, the applicant is convicted with is provided for under section 64 (1) (a) as read with section 64 (2) of the Forest Conservation and Management Act No 34 of 2016, which sections states as follows: -

- “(1) Except under a licence or permit or a management agreement issued or entered into under this Act, no person shall, in a public or provisional forest—
- a. fell, cut, take, burn, injure or remove any forest produce,”
- (2) Any person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.”

11. It is clear from the aforesaid that, the sentence provided for the offence is a fine of; Kshs 100,000 or imprisonment for a period not exceeding (6) months. The sentence meted in the present case was a fine of; Kshs 100,000 or in default imprisonment term of; two (2) years. The default period was thus unlawful.
12. As a result, in exercise of the revisionary powers of the court provided for under section 362 and 364 of the Criminal Procedure Code, I set aside the two years and substitute it with a default period of six (6) months imprisonment. However, from the lower court’s record, it is evident that the applicant paid the fine on July 8, 2022 and was released.
13. Be that as it were, the sentence is reversed as aforesaid. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 19TH DAY OF OCTOBER, 2022 VIRTUALLY

GRACE. L. NZIOKA

JUDGE

In the presence of: -

No appearance for the Applicant

Ms Maingi for the Respondent

Ms Ogutu; Court Assistant

