



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION 39 OF 2019

JANE NYAMBURA NGARI alias

NESTA WANGIGI IRERI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein moved this court vide the application dated 19/11/2019 seeking revision of the sentence imposed on her by Hon. M.N. Gicheru CM on 14/11/2017. The grounds for review are that she is a first offender and very remorseful to the actions that led to the offence she committed. Further that she had served 1/3 of her sentence.

2. At the hearing of the application, the applicant in support of the application prayed that she be released or be given non-custodial sentence so as to go and take care of her home. Ms. Mati for the respondent submitted that this court has already made a finding in High Court Appeal No. 52 of 2017 and as such, it cannot revise its own orders.

3. I have considered the application herein and the submissions by the parties at the hearing thereof and in my view, the main issue for determination is whether the same is merited.

4. I note from the court record that the applicant herein was convicted of six (6) different counts in Embu Cm Criminal case No. 1068 of 2013 and sentenced three years imprisonment in counts 1,2, 3 and 6, six (6) years in count 4 and four (4) years in count 5. The said sentences were orders to run concurrently.

5. The applicant appealed against the said judgment in Embu High Court Criminal Appeal No. 52 of 29017 and which appeal was dismissed in the judgment delivered on 1/07/2020 by Justice F. Muchemi. The effect of this is that the trial court's judgment is not the one in force but that on the High Court.

6. The application herein now seeks the review of the said judgment and in doing so, the applicant invites this court to release her or give her non-custodial sentence.

7. The jurisdiction of this court is provided for under article 165(3) of the Constitution and includes unlimited original jurisdiction in criminal and civil matters; jurisdiction to enforce bill of rights; appellate jurisdiction; interpretative jurisdiction; and any other jurisdiction, original or appellate, conferred on it by legislation.

8. The High court further has supervisory jurisdiction over subordinate courts donated by Article 165(6) of the Constitution. This jurisdiction is expounded under Sections 362 and 364 of the Criminal Procedure Code.

9. The decision subject of the instant application is that of a court of concurrent jurisdiction with this court. In my considered view, this court does not have jurisdiction to review decisions of courts of concurrent jurisdiction. The appellant having been dissatisfied with the decision of **Hon. F. Muchemi, J.**, she ought to have appealed to the Court of Appeal. This is appreciating the provisions of Article 50(2)(q) of the Constitution of Kenya 2010 which guarantees as a tenet of fair hearing the right of a person if convicted, to appeal to, or apply for review by *a higher court*. Further this is since it is the court bestowed with jurisdiction pursuant to Article 164(3) of the Constitution and Section 379(1) of the Criminal Procedure Code).

10. By reviewing the said sentence, this court would arrogate itself the appellate jurisdiction to entertain an appeal from a decision of a court of concurrent jurisdiction. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Good governance demands that cases be handled procedurally in the right forum. In my opinion, this court does not have jurisdiction over the application herein and neither can it arrogate to itself jurisdiction exceeding that which is conferred upon it by law. (See **Samuel Kamau Macharia & Another V. KCB & 2 Others App. No. 2/2011.**)

11. The application has no merit and it is hereby dismissed.

12. Orders accordingly.

Delivered, dated and signed at Embu this 20th day of January, 2021.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondent