



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION NO. E050 OF 2020

MARTHAS AWETHIA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

This matter comes up before the court for the application of the applicant, MARTHA S. AWETHA, file herein on 1.9.2020. The same, however, is silent on the relief sought thereunder. It is in the affidavit in support of the application that the applicant has prayed for revision of her sentence. She seeks that the remaining period of her sentence which is 2 years, be changed to a non-custodial sentence.

The prosecution has opposed this application, basically on grounds that the sentences were lawful and lenient in view of the sentence of 30 years imprisonment for the offence of trafficking. Counsel prayed that this application be dismissed.

I have considered the application before the court and the submissions of the Respondent in opposing the same. This application seeks that this court do exercise its powers of revision to alter the sentence meted out against the applicant, by the lower court. Under section 362 of the Criminal Procedure Code;

“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.”

And section 364 of the Act, gives directions as to the specific orders that the court may give in exercise of its revisionary powers.

From the above provisions, it is incumbent upon the applicant to prove the existence of the incorrectness, illegality and impropriety in the aggrieved orders of the subordinate court. It is only upon such proof that this court may exercise its powers of revision. With respect, the applicant has not passed this test, having failed to prove any such incorrectness, illegality or impropriety in the ordered of the trial court.

I have considered the judgment of the trial court and the sentence passed, the applicant was convicted on counts I, II, III and IV. These were charges of trafficking in persons contrary section 3(1)(3) as read with section 3(5) of the Counter Trafficking in persons Act, No. 8 of 2010. The sentences for each of those counts are:

“..... 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.”

On all the counts the appellant was convicted on, the court sentenced her to serve 5 years’ imprisonment. Without a doubt, these sentences were not only legal, but also lenient. For the sentence on count 5, 6 months. I note that the applicant has already served the same and so, same is not subject of this application.

Consequently, I am not convinced that this application has any merit. I dismiss it accordingly.

D. O. OGEMBO

JUDGE

24.5.2021.

Court:

Ruling read out in court (online) in the presence applicant and Mr. Naulikha for the state.

D. O. OGEMBO

JUDGE

24.5.2021.