



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION CASE E015 OF 2021

HUMPREY CHENG'OLI MASIKA KWANUSU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, **HUMPHREY CHENGOLI MASIKA KWANUSU**, has applied to this court for revision of his sentence. The applicant was charged in Milimani Chief Magistrate's Court, Criminal Case Number 176/2016, with 4 counts of making a Document without authority contrary 357(a) of the Penal Code. on 5.2.2019, he was sentenced to serve 4 years imprisonment on each count. The sentences were ordered to run concurrently.

The application of the applicant does not indicate which section of the law the same is brought under. However, in the affidavit in support of the application, the applicant has pleaded for leniency based on the following mitigation factors:-

- *That he is the sole breadwinner of his family.*
- *That he is remorseful and has reformed.*
- *That he has a wife and 9 children who are in school.*
- *That his parents are deceased and his siblings are aged.*
- *That his wife is sickly and jobless.*
- *That while in prison, he has undertaken various programmes and courses.*

He has pleaded that the court do review his sentence, with an option of fine.

In opposing this application, Mr. Mutuma, for the Respondent, submitted that the sentence meted out on the applicant was proper in law and was in fact lenient. Counsel urged the court to dismiss this application.

I have considered the submissions of both the applicant and the Respondent sides. I have also perused the application of the applicant and the affidavit in support of the same. I have also perused the record of the proceedings before the lower court.

The jurisdiction of this court on revision is granted under section 362 of the Criminal Procedure Code, which states:-

“The High Court 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.”

From the above, it is clear that for this court to invoke its powers of revision, it must be convinced on the error (incorrectness) illegality or impropriety in the order or sentence of the lower court. Being the appellant, it was incumbent upon the applicant to point out to this court such incorrectness, illegality or impropriety in the order or sentence of the lower. The applicant made no attempt whatsoever in discharging this burden.

Instead, the applicant has urged this court for revision of the sentence herein. It has been submitted that the sentence was excessive in the circumstances. The applicant has based these submissions on the mitigation factors as enumerated above. The issue therefore for

determination is whether, indeed the sentence(s) of the trial court were excessive as pleaded.

It is noted that the applicant faced 4 counts of making a document without authority contrary to section 357(a) of the Penal Code. The said penal section provides for a sentence of 7 years' imprisonment. An alternative of a fine a not provided for. The trial court sentenced the applicant to serve 4 years' imprisonment on each count. The sentences were ordered to run concurrently. I am convinced by the submissions of learned counsel for the state, that the sentence(s) of the trial court were legal, proper and in accordance with the law. The same were in no way excessive as pleaded by the applicant.

With respect to the mitigating factors that the applicant has raised in this application, I have again considered the proceedings of the trial court. I have noted that upon being convicted on 22.11.2018, the applicant was accorded the opportunity to mitigate. In his mitigation, he raised the same issues as he has raised herein. The trial magistrate had following the mitigation called for a probation officer's, pre-sentence report. The court, in its sentence proceedings duly noted that it had taken into account both the mitigation of the applicant and the Probation Officer's Report. I do not find fault in the sentence of the trial court in as far as the court wholly considered the circumstances of the case.

This court is therefore not convinced that this application of the applicant (undated) seeking revision of his sentence, has any merit. I dismiss the same. For avoidance of doubt, it is hereby ordered that the applicant shall serve out his sentence as ordered by the trial court on 5.2.2019. Orders accordingly

D. O. OGEMBO

JUDGE

28.7.2021.

Court:

Ruling read out in open court in presence of the applicant (Jamhuri Prison) and Mr. Kiragu for the state.

D. O. OGEMBO

JUDGE

28.7.2021.