



REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISCELLANEOUS CRIMINAL APPLICATION NO. 8 OF 2019

JOHN KURGAT.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

Coram: Hon. Justice R. Nyakundi

Mr. Mugun for the State

Applicant in person

RULING

BACKGROUND: -

1. The Applicant moved this court for revision of sentence. He was charged and convicted with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the Sexual Offences Act and Section 145 of the Penal Code.
2. On 25th September 2007, upon conviction, the Applicant was sentenced to serve Thirty (30) years imprisonment.
3. As at 18th November, 2021 the Applicant had served Fifteen (15) years and he sought to have the remaining 15 years of his sentence reduced.
4. The Applicant's Application for revision of sentence was founded on the following reasons: -
 - i. **The Applicant is remorseful, he has reformed and has been rehabilitated;**
 - ii. **The Applicant is a first-time offender;**
 - iii. **At the time of the Applicant's conviction, his wife passed on leaving their children without a breadwinner;**
 - iv. **The Applicant has gone through vocational training, and he has attained the qualification of grade 1 polisher (carpentry) and grade 1 painter and decorator; and**
 - v. **The Applicant is ready to be integrated back into the society**

5. The prosecution did not oppose the Application herein.

ANALYSIS AND DETERMINATION: -

6. The powers of the High Court on revision are provided for under Section 362 of the Criminal Procedure Code provides 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.”

7. The Applicant filed Two (2) Appeals Eldoret HCCA 83 OF 2007 and subsequently Eldoret CRA 28 of 2004 (also Kisumu 71 of 2014). Both the aforesaid Appeals were dismissed thus this Application meets the threshold set out in Section 364(5) of the Criminal Procedure Code.

8. It is commendable that the Applicant has undergone vocational training and where he has attained qualifications that will prove to be helpful to him once he completes serving his sentence.

9. It has been Fifteen (15) years since the Applicant was convicted and sentenced. The Applicant did not adduce any evidence that his wife passed on when he was convicted therefore this Court shall not address itself to this issue as the same has not been proved.

10. The Court in **REPUBLIC V JAMES KIARIE MUTUNGEI [2017] eKLR** following observation on the application of the Court's revisionary powers as per section 362 of the Criminal Procedure Code: -

“As can be seen from this analysis the function of the court under section 362 of the Criminal Procedure Code as read with section 364 is to enable the court to scrutinize and examine the correctness of facts of a subordinate court or tribunal so as to make a finding on legality or propriety. Legality means lawfulness, strict adherence to law, correctness and propriety ordinarily having the same meaning. It can be deduced from this evaluation that the jurisdiction on revision will be invoked where there is a decision by a subordinate court, the decision is not subject of appeal, the grounds of revision must exist against the decision being challenged from the subordinate court. The interference under section 362 by this court on revision can only be justified if the impugned decision is grossly erroneous, to justness appropriateness and suitability to trial. The trial magistrate has not complied with the provisions of the law, the findings made and the decision reached failed to take into account the evidence that there was a misdirection of facts on the face of the record, the parties in the case were not heard or given an opportunity to present the case before the decision or the decision being contested by the aggrieved party was arbitrary amounting to abuse of the court process.”

11. Although this Court sympathises with the Applicant, it is unfortunate that the Applicant has failed to present to this Court any compelling reasons or sufficient grounds to warrant the reduction of his sentence. I find that the sentence in issue herein is legal and proper since the same has been upheld by the High Court and the Court of Appeal as was outlined in paragraph 7 herein above.

12. I find that the Applicant's Application for revision of sentence lacks merit. The same is hereby dismissed.

DATED, SIGNED AND DESPATCHED VIA THE EMAILS AT ELDORET THIS 26TH DAY OF NOVEMBER, 2021.

(See Email: mark.mugun@gmail.com, eldoretmainprisondocs@gmail.com)

R. NYAKUNDI

JUDGE