



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL REVISION NO. E036 OF 2020

JOSHUA ESIKOKHO OLWANGU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By a notice of motion application filed in court on; 29th September 2020, the applicant is seeking for revision of the sentence meted upon him, vide Criminal Case No. 3763 of 2012, at the Chief Magistrate's Court at; Makadara Law Courts.

2. The application is supported by an affidavit sworn by the applicant, in which he deposes that, he was arrested on 9th September 2012, and charged with the offence of; possession of government trophies. On 20th June 2019, he was sentenced to serve five (5) years in jail.

3. However, he spent eight (8) months on trial while in custody, but that period was not taken into account, when the sentence was meted out. He prays the same be considered. He further avers that; he is aged 62 years, has eleven (11) children and two (2) wives. Further, he is completely remorseful and has been fully rehabilitated.

4. However, the Respondent opposed the application orally and argued that, the applicant was given lenient sentence on the various offences he was charged with, and the sentences runs concurrently. As such, the court should not interfere with the same.

5. I have considered the application, and I find that, the applicant was charged with various offences as stated here below;

a) Count 1: Being in possession of government trophies, contrary to section 42(1) (b) as read with section 56(1) (b) of Wildlife (Conservation management) Act, cap 376, Laws of Kenya;

b) Count 2: Dealing in government trophies without licence, contrary to; section 43 (4) (a) of Wildlife (Conservation management) Act, cap 376, Laws of Kenya;

c) Count 3: Failing to report possession of game trophy contrary to section 39 (3) (a) Of, the Wildlife (Conservation management) Act, cap 376, Laws of Kenya;

d) Count 4: Attempted exportation of government trophies, contrary to section 45(5) as read with section 45(2) and 56 (1) of the Wildlife (Conservation management) Act, cap 376, Laws of Kenya;

e) Count 5: Deceptive packaging of goods for export, contrary to section 202 (b) of the East African Community Customs Management Act, 2004.

6. By a judgment delivered on 7th June 2019, the applicant was convicted on all the five counts and sentenced as follows:

a) Count 1: Three (3) years imprisonment,

b) Count 2: Five (5) years imprisonment,

c) Count 3: Twelve (12) months imprisonment,

d) Count 4: Five (5) years imprisonment,

e) Count 5: Three (3) years imprisonment.

7. The aforesaid sentences were ordered to run concurrently. The applicant now wants the period spent in custody merely considered. The powers of the court to review a sentence of the subordinate court, is provided for under section 362 of Criminal Procedure Code. The provisions thereof state 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 subordinate court

8. Therefore, to review a sentence, it must be shown the said sentence is incorrect, illegal or improper. In that regard, it suffices to note that, the sentences provided for under the law for the respective offences that the applicant was convicted of are as follows:

a) On the 1st count; 56(1) (b); a fine not exceeding Kshs 20,000 or imprisonment for a term not exceeding five years or both fine and imprisonment;

b) On 2nd count; section 43(4); a fine not exceeding Kshs 20,000 or a term not exceeding five years or both fine and imprisonment;

c) On 3rd count, section 39(3); a fine not exceeding Kshs 10,000 or twelve months' imprisonment or both fine and imprisonment;

d) On count 4, section 45 (2) read with section 56 (1) (2) (b) Kshs 20,000 and a term not exceeding five years or both fine and imprisonment;

e) On 5th count, section 202 of EAC Customs Management Act 2007, term not exceeding five years or a fine equal to 50% of the value of goods

9. I therefore find that, the sentences meted upon the applicant herein are correct, regular, and proper as provided for under the law. As such, the issue of review thereof, does not arise. The sentences can only be considered on appeal which the applicant is at liberty to pursue, if he so wishes to.

10. I further note that, in fact, the applicant has served the sentence on the 3rd count, the sentence on 1st and 5th count is likely to have been spent, if remission is applied thereto. The sentences on 2nd and 4th counts have generally been served for a period of at least two and a half (2½) years; and may be the only sentence available for appeal.

11. Be that as it were, I realise that, the sentences imposed were the maximum provided for in the law under which the applicant was charged. An appeal on sentence may provide an opportunity for the court to relook at the same. In the meantime, the application herein is not allowed.

It is so ordered.

DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 21ST DAY OF DECEMBER 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

Applicant in person

Ms Chege for the Respondent

Edwin Ombuna: Court Assistant