



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ANTI CORRUPTION AND ECONOMIC CRIMES DIVISION

ACEC REVISION NO 3 OF 2020

GEORGE OTIENO ODHIAMBO.....APPLICANT

VS

REPUBLIC.....RESPONDENT

(Being an application for revision from the Judgment in CMCC No 33 of 2011)

Hon. F. Kombo (SRM) dated 5th November 2011)

RULING ON REVISION

1. The applicant was convicted of the offence of knowingly giving a false statement to one's principal contrary to Section 41(2) as read with section 41(2) as read with section 48(1) of the Anti Corruption and Economic Crimes Act, 2003.

He was sentenced under section 48(1) (a) of ACECA to pay a fine of Kshs 500,000/- (Five Hundred Thousand) and in default to suffer imprisonment for twelve months. He was also sentenced under section 48(1)(b) as read with section 48(2)(a) to a further mandatory fine of twice the sum of benefit namely Kshs 2,934,600/- (Two Million, Nine Hundred Thirty Four Thousand, Six Hundred) which amounts to Kshs 5,869,200/- (Five Million, Eight Hundred Sixty Nine Thousand, Two Hundred) and in default imprisonment for 12 months. The total fine imposed upon him therefore is Kshs 6,369,200/- (Six Million Three Hundred and Sixty Nine Thousand, Two hundred).

2. The applicant has now filed an application dated 24th January 2020 in which he asks the court to find it prudent and review his custodial sentence from two years to a non-custodial sentence. He also asks the court to review the fines imposed on him to an affordable amount. He asks the court to review the term of imprisonment to the term already served in prison being 3 months since incarnation.

3. The application is expressed to be brought under sections 22, 48, 50(2) and 51 of the Constitution as well as sections 362 and 364 of the Criminal Procedure Code.

The grounds in support of the application for revision, which are set out in his affidavit, are that he is a first offender and has served 3 months in prison; that he is remorseful and has reformed in the time he has been in prison; and that he has a family and children in school who are dependent on him as well as ageing parents and a mentally challenged brother, all of whom are dependent on him.

4. Section 48(1)(a) and section 48(2)(a) provide as follows:

(1) A person convicted of an offence under this Part shall be liable to—

(a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and

(b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

7. At Section 48(2) (a) ACECA provides that:

The mandatory fine referred to in subsection (1)(b) shall be determined as follows—

(a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);

8. Section 362 and 364 of the Criminal Procedure Code vest in the High Court power to call for the record of a lower court and examine the correctness, propriety or legality of any order passed.
9. Having examined the record of the lower court in this matter and the judgment of Hon. F. Kombo (SPM) dated 5th November 2019, I find no incorrectness, impropriety or illegality. The application before me seeks revision of the applicant's sentence, and having examined the record and considered the law, I find that the trial court imposed the sentence prescribed by the relevant sections of ACECA.
10. I accordingly decline to exercise powers of revision in this matter and dismiss the application.

Dated and Signed at Nairobi this 27th day of January 2020.

MUMBI NGUGI

JUDGE