



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISCELLANEOUS CRIMINAL APPLICATION NO. 76 OF 2019

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IN THE MATTER OF AN APPLICATION FOR REVIEW OF THE DECISION

BY THE PRINCIPAL MAGISTRATE AT NKUBU IN CRIMINAL CASE NO 1062 OF 2019

PATRICK NKUNJA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

1. Patrick Nkunja was charged at Nkubu Principal Magistrate Court in Criminal Case No. 1062 of 2019, with the offence of cutting down crop of cultivated produce contrary to section 334 (a) of the Penal Code.
2. It was alleged that on 13/8/2019 at around 7.30 at about 7.30 am at Kothine sub-location in Imenti North Sub-county, Meru County the accused being a cousin to the complainant's husband who is now deceased, went to the complainant's shamba and cut down her plants worth Ksh. 171,000.
3. The applicant pleaded guilty to the charges. The facts were read to him and he admitted them to be true. He was then convicted and sentenced to a fine of Ksh 200,000/= and in default to serve 2 years' imprisonment.
4. The applicant was aggrieved by the conviction and sentence and he applied for revision thereto. According to the applicants supporting affidavit dated 10/12/2019, he told the court that he mistakenly pleaded to the charge, as he did not have counsel and the decision he made was out of fear and despair not aware of the consequences. The investigating officer made him think that he had committed an offence and no matter how he pleaded he would face the consequences. He argued that, prior to being arraigned in court there was a dispute on ownership of the suit land with the complainant. Since childhood he has been in possession and utilization of the suit land where the crops had been planted.
5. He took the view that the charge was defective because it did not disclose the offence of cutting down of cultivated produce contrary to section 334 (a) of the Penal code. Furthermore, he stated that there was no report of the agricultural officer, and the said crops even if quantified would not attract a sum of Kshs. 500.

ANALYSIS AND DETERMINATION

6. I have carefully perused the application, the supporting affidavit and the original record. This is a revision application. The Applicant has invoked the supervisory jurisdiction of the court conferred under article 165(6) & (7) of the Constitution as stated below:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

7. The broader objective of supervisory jurisdiction is to ensure fair administration of justice. But for purposes of revision, Section 362 of the

Criminal Procedure Code hems the scope of the revision jurisdiction of the court 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”

8. The legality or propriety of plea and regularity of the proceedings of the trial court are in issue here. The Applicant alleges coercion and ignorance when he took the plea. He stated that he was not represented by legal counsel. And, that the totality of these shortcomings was that the plea was not unequivocal. The record shows that the charges were read and explained to the applicant in a language which he understood. Thereafter the particulars of the charge were read in which he answered *“the facts as stated are true”*. The applicant was also given an opportunity to mitigate and tendered his mitigation.

9. In view of the foregoing, appropriate procedure was adopted in recording the plea. He also understood the charges and the facts and admitted them. He had every opportunity to inform the court that the particulars of the charge or facts were not true, or that he had been coerced to enter a plea of guilt. He has not also adduced any evidence of coercion. The applicant cannot therefore allege that he was coerced.

10. In the case of **John Muendo Musau v Republic [2013] eKLR** the court observed: -

“We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not guilty. That is to say that, an accused person can change his plea at any time before sentence.”

11. On examination of the record, there is nothing in mitigation that negated any of the ingredients of the offence or facts. This application is merely an afterthought in the hope it will offer him reprieve. The plea was unequivocal, legal and proper. The proceeding was not vitiated by any irregularity or impropriety. Consequently, I find this application to be without merit and is dismissed. It is so ordered.

Dated signed and delivered in open court at Meru this 20th day of February, 2020

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F. GIKONYO

JUDGE

IN PRESENCE OF

M/S Ndandwa for respondent

Munene for applicant

Applicant – absent

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F. GIKONYO

JUDGE