



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL REVISION NO. 26 OF 2019

BETTY CHELANGAT CHELOGOI..... APPLICANT

VERSUS

REPUBLIC..... STATE

RULING

1. Betty Chelangat Chelogoi (the “Applicant”) was arraigned before the Chief Magistrate’s Court in Molo charged with a single count of causing grievous harm contrary to section 234 of the Penal Code. It was alleged that the Applicant unlawfully assaulted Jane Chebet Langat and caused her grievous harm on 22/10/2014 at Masaita Village in Londiani District of Kericho County.

2. The Applicant denied the charges and a fully-fledged trial ensued. At the conclusion of the trial, the Learned Trial Magistrate found the Applicant guilty and sentenced her to ten years imprisonment.

3. The sentence was imposed on 28/10/2015 but the Applicant has been in custody since 03/11/2014 when she was first arraigned. This was because she could not afford bail.

4. The Applicant did not timeously prefer an appeal against the conviction and sentence. However, on 25/05/2018, she filed an application to be permitted to file an appeal out of time. She withdrew that application and has, instead, now approached this Court praying that the Court exercises its revisionary powers under section 364 of the Criminal Procedure Code to review the sentence imposed.

5. In her Application materials before the Court and in her submissions, the Applicant proffered four reasons for her request to review her sentence as imposed:

a. First, the Applicant says that she is now been diagnosed with pneumatic heart condition which requires her to be on medication which is not readily available in Prison. Additionally, Prison conditions make it quite difficult to manage the terminal condition. She has produced a medical report by Dr. Thaithi F.B. of Nakuru PGH confirming this diagnosis.

b. Second, the Applicant says that she is quite remorseful for her actions and that she deeply regrets it. She has spent her time in Prison reflecting on her actions and realizes that it was a major mistake to act as she did.

c. Third, the Applicant submits that she is now fully rehabilitated and reformed. In addition to being a “model” Prisoner in terms of discipline, the Applicant submits that she has learnt various trades and skills in Prison which will serve her well as a citizen. She attached a Recommendation Letter from Nakuru Women’s Prison confirming her character reforms and trades and skills learnt.

d. Fourth, the Applicant pleads with the Court to give her a chance to go back to the society and take care of her six young children she left behind. She submitted that the children badly need her now; and that the family and community are ready to welcome her back into the society.

6. The Court called for a Probation Report which was filed in Court. It is very favourable to the Applicant. It describes an inmate who is evidently remorseful for her felony but whose family and community is eager to have back home. The Probation Report states that there are nil chances of re-offending and strongly recommends that the Court considers Probation as a mode of sentence for her.

7. The Probation Report describes the Applicant as a “model Prisoner” based on the interviews of Prison authorities. The same position is substantiated in an extremely detailed Recommendation Letter by Ms. Mary Muhoro, the Officer in Charge of Nakuru Women’s Prison. The Recommendation letter reports that the Applicant is ready to be re-integrated back to the society and lists the trainings she has gone through such as crotcheting, baking, stress management and counselling as well as peer counselling.

8. It is true that the Applicant committed a heinous crime. She attacked a helpless woman who she suspected was having an affair with her

husband. She used a *jembe* for the attack and the assault cost the victim the permanent loss of sight in her left eye. There is no question that this was a cruel and dastardly act.

9. It is, however, also true that the Applicant has been in custody for five years and six months. It is further true that during that time, the Applicant has demonstrated that he is fully reformed and that he has taken positive lessons from both her crime and her time in custody. It is also true that the Applicant is demonstrably remorseful for her actions.

10. An additional factor militating in favour of revision includes the medical condition of the Applicant. The filed medical report shows that the Applicant suffers from pneumatic heart condition which requires regular medical intervention and medication. Prison conditions may not be the best for the management of this disease. Additionally, the Probation Report filed in the case catalogues supportive conditions and community and family support for her release.

11. Considering all these factors, it is my conclusion that the Applicant satisfies the criterion for this Court to exercise its discretion and jurisdiction under section 364 of the Criminal Procedure Code to revise the sentence imposed in her case. No more sentencing objectives would be served by the continued incarceration of the Applicant.

12. Consequently, in the circumstances of the case, I hereby revise the sentence imposed on the Applicant to:

a. A custodial sentence of the time already served as at today.

b. A probation period of two years.

13. Orders accordingly.

Dated and delivered at Nakuru this 28th day of May, 2020.

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JOEL NGUGI

JUDGE