



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI CORRUPTION AND ECONOMIC CRIMES DIVISION
CORAM: MUMBI NGUGI J
ACEC REVISION NO 9 OF 2020
FLORENCE WANJIKU MUIRURI.....APPLICANT
VS
REPUBLIC.....RESPONDENT

(Being an application for revision of the conviction and sentence (Nyutu, SPM) dated 7th July 2020 in ACC No. 4 of 2020)

RULING ON REVISION

1. The applicant has brought the present application by way of a letter from her Advocates dated 8th July 2020 in which she seeks revision of her sentence in Nairobi Chief Magistrate's Court at Milimani, in ACC No. 4 of 2020- Republic vs Florence Wanjiku Muiruri. The application is expressed to be brought under section 364 and 365 of the Criminal Procedure Code, Cap 75 Laws of Kenya.
2. In the first two grounds in support of the application, it is argued that in respect to count I and II respectively, the applicant was convicted on her own plea of guilty and sentenced to a fine of Kshs three hundred thousand (Kshs 300,000) only or to a term of 1 year in default on each count of the offence under section 6(1) (a) of the Bribery Act No 47 of 2016 without considering that she was a first offender. A third ground relied on is that the applicant was sentenced as above yet the court failed to consider that she did not confer (on herself) any quantifiable benefit from the proceeds of the said transaction, neither did anyone else confer a quantifiable benefit from the same processes, since the monies obtained were recovered by the EACC while in her possession.
3. A further ground relied on is that the applicant was sentenced yet the court failed to consider that she had requested for a plea bargain but the office of the Director of Public Prosecution (ODPP) delayed in making a determination on the same. She was also sentenced without the court considering that she did not cause any physical harm while committing the offence and that the offence was committed in a manner unlikely to cause any physical harm.
4. The applicant further argues that the court had also failed to consider that the complainant was engaging in the liquor business unlawfully and without the proper documentation as required by the law. The court had also failed to consider the applicant's mitigation, and in particular the fact that the applicant had been suspended from her work because of the offence and therefore stood to also (lose) her employment as a result of her being convicted on her own plea of guilt. The applicant asks the court to

call for the lower court file and review the fines imposed on the applicant to a reasonable amount.

5. Section 362 of the Criminal Procedure Code sets out the court's powers of revision of a decision from a magistrate's court in the following terms:

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. (Emphasis added)

6. At section 364 cited by the applicant in this matter, it is provided that:

Powers of High Court on revision

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(c) ...

7. I have examined the record of the Magistrate's Court from which this application arises. The applicant was charged at count I with the offence of receiving a bribe contrary to section 6(1) (a) as read with section 18 of the Bribery Act, No. 47 of 2016. The particulars of the offence were that on the 26th day of February 2019 in Nairobi within Nairobi County being a person employed by a public body to wit the Nairobi City County Government as a member of the Nairobi City County Alcoholic Drinks Control and Licensing Board requested a financial benefit of Kshs 10,000 from Faith Jeruto Kiplagat as an inducement to fast track the processing of a liquor licence permit. Count II charged the applicant with receiving a bribe contrary to section 6(1)(a) as read with section 18 of the Bribery Act.

8. At Count III, the applicant was charged with abuse of office contrary to section 46 as read with section 48(1) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003. The particulars under this count were that on the same day, time and place as in the other counts, being a person employed by a public body, the Nairobi City County Government, the applicant used her office to improperly confer on herself a benefit of Kshs 10,000 from the complainant in order to fast track the issuance of a liquor licence permit.

9. On 7th July 2020, the applicant pleaded guilty to the charges against her in count I and II and was convicted on her own plea of guilty. In her mitigation, it was stated on her behalf that she was a first offender and was remorseful for her actions from which she did not benefit.

10. I have considered the record of the trial court, the charges against and the sentences imposed on the applicant. In an application for revision, the court is required to satisfy 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. Having considered the proceedings and the offence charged against the applicant, I am unable to find any incorrectness, illegality or impropriety in the sentence passed against the applicant. I can also find no irregularity in the proceedings. The applicant was sentenced on her own plea of guilty. She understood the language in which the charges and the facts were read to her.

11. With regard to the sentence, the offences with which the applicant was charged and to which she

pleaded guilty are set out in section 6 (1) (a) of the Bribery Act as follows:

(1) A person commits the offence of receiving a bribe if —

(a) the person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving the bribe or by another person;

12. Section 18 of the Bribery Act sets out the penalties under the Act as follows:

An individual found guilty of an offence under section 5, 6, or 13 —

(a) shall be liable on conviction, to imprisonment for a term not exceeding ten years, or to a fine not exceeding five million shillings, or both; and

(b) may be liable to an additional mandatory fine if, as a result of the conduct constituting the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.

13. The applicant was sentenced to a fine of Kshs 300,000 or imprisonment for a term of 1 year in default. Given the severity of the sentence that is provided by law, it seems to me that this was a reasonable sentence for a first offender in the circumstances, not losing sight of the deleterious effect of bribery and related offences in our country. The argument that the applicant did not cause physical harm to any person, or that the offence of bribery does not cause physical harm, also ignores the devastating consequences of corruption, which bribery is a category of, on our social and economic fabric. At any rate, it is not a consideration in determining whether the sentence was reasonable or not.

14. The other issues raised by the applicant, in my view, do not lend themselves to the exercise of the court's power of revision. There is no obligation on the State to enter into a plea bargain agreement with an accused person. Further, the conduct of a complainant, in my view, would not be a factor to take into account when considering the sentence of a public officer who has admitted soliciting and taking a bribe in order to perform her public duties.

15. It is my view therefore that this application has no merit, and it is hereby dismissed. The court sees no basis to call for and revise the orders of the trial court.

Dated Delivered and Signed at Nairobi this 21st day of August 2020

MUMBI NGUGI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties electronically with their consent.

MUMBI NGUGI

JUDGE