



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERUGOYA**

**CRIMINAL REVISION NO. 160 OF 2020**

*(From original conviction and sentence in Criminal Case No.203 of 2016*

*of the Principal Magistrate’s Court at Baricho)*

**BETH WANGECI NDUATI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**R U L I N G**

1. The application before this court is dated 10<sup>th</sup> August 2020, in which the applicant is seeking orders that:

***a) The application be certified urgent***

***b) The honourable court be pleased to vacate the orders of E.H Keago in Baricho criminal case no.203 of 2016 delivered in 3.7.2018, sentencing the applicant to 20 years term of imprisonment contrary to section 3 (1) as read with Section 3 (2) of the Narcotic Drugs and Psychotropic Substances Control Act, 5 years for the second count of resisting arrest contrary to section 103 (a) of the Police Act and another 5 years for the offence of assaulting a police officer on duty contrary to section 103 (a) of the National Service Police Act No. 11A of 2011.***

***c) That costs be provided for***

***d) That it is only fair for the court to allow this application.***

The prosecution conceded to the present application.

The application is premised on the grounds that;

***a. The applicant’s convictions in the criminal cases Baricho Case No 56 of 2017, Baricho Case No 918 of 2015 were set aside and quashed, after the respondent conceded to the grounds of appeal in Kerugoya Criminal Appeal No. 46 of 2018, No.42 of 2019.***

***b. There were irregularities in the prosecution’s case that led to the unjustified conviction in Baricho criminal case No .203 of 2016 with similar charges.***

***c. That the applicant continues to suffer a miscarriage of justice for offences she did not commit.***

***d. that it is only fair for the court to allow this application.***

The prosecution conceded to the present application.

The application is supported by the affidavit of the Applicant sworn on 10<sup>th</sup> August 2020.

The applicant averred that she was charged in three cases Baricho Criminal Case No 56 of 2017,918 of 2015 and 203 of 2016 and she was

sentenced to 10 years, 20 years and 30 years' imprisonment in each case respectively. That she filed criminal appeal case No. 46 of 2018, No.42 of 2019 and No.41 of 2018 for each of the cases respectively.

She depones that the prosecution conceded to the grounds of appeal and in criminal appeal no. 46 of 2018, No.42 of 2019 and the convictions were set aside and quashed.

The present application thus seeks a revision of the conviction in **Baricho Criminal Case no. 203 of 2016** that was upheld in the appeal No.41 of 2018 in a judgment delivered on 25.2.2020.

When the matter came up for hearing on the 13.8.2020, the prosecution did not oppose the application for revision. The respondent asked the court to look at the application.

2. I have considered the application. The application is brought under **Article 165(6) and (7) of the Constitution, Section 362 and Section 364(1) of the Criminal Procedure Code.**

3. The main prayer in this application is revision of the orders of **E.H Keago in Baricho Criminal Case 203/2016**. The powers of this court on revision are donated under **Section 362 and 364 (1) of the Criminal Procedure Code.**

**Section 362 of the Criminal Procedure Code** provides:-

***362. "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."***

4. Although the Applicant seeks revision orders in **Baricho Criminal Case No. 203/2016**, the truth of the matter is that the Applicant had filed an appeal arising from the Judgment in **Baricho Criminal Case No.203/2016**. This was **Criminal Appeal No.41 of 2018 at High Court of Kenya Kerugoya Beth Wangechi Nduati -vs- Republic**. Judgment in the appeal was delivered on 25<sup>th</sup> February 2020 dismissing the appeal.

5. A reading of **Section 362 of the Criminal Procedure Code** will show that it gives High Court jurisdiction to call for proceedings before any sub-ordinate 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 sub-ordinate court. The emphasis here is that the jurisdiction is for revision of orders issued by a Sub-ordinate Court. This is a supervisory jurisdiction which enables the High Court to either on its own motion or upon being moved by a party to correct any irregularities or illegalities and issue such orders as may be expedient to correct or prevent a miscarriage of justice or give such directions as the circumstances of the case demands. The orders which the court may issue on revision are provided under **Section 364(1) (a) and (b) of the Criminal Procedure Code**. It provides:-

***"364. (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."***

6. The High Court has no jurisdiction to issue orders on revision where a party has filed an appeal and the High Court has given its decision. **Article 165(6)** of the Constitution provides that –

***" The High Court has supervisory jurisdiction over the Sub-ordinate Courts and over any person, body or authority exercising a judicial or quasi judicial function, but not over a superior court."***

The supervisory jurisdiction donated by the Constitution is over the Sub-ordinate Court. The application for revision filed by the Applicant is not properly before this court. It is expected that when the applicant filed her appeal against the Judgment of the trial Magistrate, she raised the alleged irregularities in her grounds of appeal. This court after considering the grounds of appeal found that the appeal was without merits. It is quite irregular and a clear abuse of Court process for the Applicant to sneak in an application for revision after this court has rendered Judgment on the appeal. The Applicant had the right to appeal to the Court of Appeal. The High Court in its revision jurisdiction will not entertain an application for revision by a party who could have appealed **Section 364(5) Criminal Procedure Code** refers. In this case the Applicant filed an appeal which was heard and determined on merits. The widow of revision was shut. She does not have the luxury under **Section 362 and 364 of the Criminal Procedure Code** to bring an application for revision. I find that this application is not properly before this court. It matters not that the Respondent did not oppose the application. The Judgment in **Criminal Appeal No.41/2018** shows that the Respondents had vehemently opposed the appeal. The turn around has not been explained. The allegation that convictions in other matters were set aside is not tenable. It is trite that each case must be determined on its own facts, circumstances and merits. This court is duty bound to consider the application and give a determination on its merits.

7. For the reasons stated above I find that the application is not properly before this court. I dismiss the application.

**Signed By:**

**HON. LADY JUSTICE LUCY GITARI**

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**Dated, signed and delivered at Kerugoya by Hon. Lady Justice J.N Mulwa this 29<sup>th</sup> Day of October 2020.**