



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL REVISION NO. 24 OF 2019

DAVID MUCHANGI.....APPLICANT

AND

REPUBLIC.....RESPONDENT

RULING

The applicant herein was charged and convicted with the offence of stock theft Contrary to Section 278 of the Penal Code and sentenced to serve ten (10) years imprisonment. The particulars were that; on the 12th day of April 2014 at Kathungururu Village Kathangari Sub Location within the Embu County, jointly with others not before the court stole one brown bull valued at kshs. 10,000/- the property of ANNA IRIMBA.

He has moved this court by way of an application for review filed on the 20th day of September, 2010. In his application, he states that he has fully reformed and that he has been engaging himself in rehabilitation programs while in prison. He further states that he was a first offender and has regretted the commission of the offence.

The applicant has urged the court to exercise its powers of leniency and consider the provision of Article 50(2) of the constitution which provides that an accused person should benefit from the least severe punishment for an offence if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.

When the application came up for hearing, he relied on his written submissions in which he has reiterated the contents of his application save to add that the time he had spent in custody be taken into account when computing the sentence.

On her part, counsel for the respondent made no submissions but left it to the court to decide.

The court has considered the application and the submissions by the applicant.

The powers of the High Court in revision is contained in Section 362 through to section 366 of the Criminal Procedure Code (Cap 75).

Section 362 provides;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purposes 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.”

Section 364(5) provides as follows;

“Unless an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed”

It is clear that the provision of section 364(5) can only be invoked where there are glaring acts or omission but should not be a substitute for an appeal.

I note from the record that the applicant appealed against both the conviction and sentence in criminal appeal number 50 of 2014 at Embu.

The High Court dismissed his appeal and found that the conviction was safe and the sentence was within the law.

The court notes that the sentence that was imposed by the trial Magistrate was not the maximum sentence and in imposing the same, the court took into account the applicant's mitigation.

In the circumstances, I find that the application has no merits and it is hereby dismissed.

Orders accordingly.

Dated, Delivered and signed at EMBU this 23rd day of October, 2020.

.....

L. NJUGUNA

JUDGE

In the Presence of

.....*For the Applicant*

.....*For the Respondent*