REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei - J

CRIMINAL REVISION E002 OF 2020

JOHN MWANGI KARIUKI...APPLICANT

VERSUS

REPUBLIC..RESPONDENT

RULING

1. The appellant was charged and convicted on his own plea of guilty with the offences of contravening provisions of Prevention, Control or Suppression of Covid- 19 directions contrary to section 36M as read with section 164 of the Public Health Act in respect of count 1 and operating bar without alcoholic drinks license contrary to section 7(1) (b) as read with section 62 of the Alcoholic Drinks Control Act No 4 of 2010. He was sentenced to pay a fine of 30,000/- or 2 months imprisonment in respect of count 1 and a fine of Kshs 200,000/- or 1 year imprisonment in respect of count 2. He has now applied to this court under section 364 (1)(b) of the Criminal Procedure Code for reduction of the fine.

2. The state opposed the application vide a replying affidavit where counsel contended that the application is without merit as the fines imposed were within the law.

3. The application was disposed of by way of written submissions and the appellant cited the case of **Margaret Lima Tuje v R (2016) eKLR** in urging the court to allow the application. The state submitted that the trial court imposed fines that were within the law and the court was urged to dismiss the application.

4. The issue for determination is whether the court may grant the orders sought.

5. The application is cited as being brought under the revisional powers of the High Court under section 364(1)(b) of the Criminal Procedure Code that empowers the High Court to revise the orders of subordinate courts. In the said section, it states as follows;

> ***"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 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 than an order of acquittal, alter or reverse the order.***

6. I wish to quickly point out that section 364(1)(b) is of no assistance to the applicant. The principles upon which an appellate court will act in exercising discretion to review, alter or set aside a sentence imposed by the trial court were observed in the case of **Ogolla & S/o Owuor v Republic [1954] EACA 270** where the court stated:

> ***"The court does not alter a sentence on the mere ground that if members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless as was said in JAMES v REPUBLIC [1950] EACA pg 147, it is evident that the judge has acted upon wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case."***

7. A look at section 164 of the Public Health Act as well as section 62 of the Alcoholic Drinks Act 2010 shows that the finding of the trial court is within the law hence there is no reason to interfere with the sentence of the trial court.

8. Similarly, section 382 of the Criminal Procedure Code provides for instances where finding or sentence are reversible by reason of error or omission in charge or other proceedings. It states that**:**

> "***Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:***
>
> ***Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings***."

9. I find no error or irregularity or illegality of principle when the court meted the mentioned sentences on the applicant. The fines imposed were meant to act as deterrence in view of the need to protect the citizens from harm owing to the Covid-19 pandemic. The said fines were within the law and I see no reason to interfere with the same.

10. In the result, it is my finding that the applicant's application dated 10.9.2020 lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 23rd day of November, 2020.

D. K. Kemei

Judge