



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL REVISION NO. 2 OF 2020

(From original conviction and sentence in Criminal

Case No. 10 of 2015 of the High Court at Kerugoya)

JUDY MUKAMI MUNGAI.....APPLICANT

– VS –

REPUBLIC.....RESPONDENT

RULING

1. The applicant Judith(Judy) Mukami Mungai was charged with the offence of Murder which was later reduced to the lesser charge of Manslaughter contrary to Section 202 of the Penal Code upon recording a plea bargaining agreement on the 13/3/2019.

2. The applicant, then accused, was offered an opportunity to mitigate which she did and a probation report prepared before sentencing. The court sentenced the applicant to serve 15 years imprisonment on the 25/3/2019.

3. The application before me is for Revision of the trial court's judgment. The trial court is the High Court, (Gitari –J) in High Court Criminal (Murder) Case No. 10 of 2015. The Judgment was delivered on the 13/1/2020. By her application, the applicant urges the court to consider the time she served in custody stated to be three years and 10 months, and revise the sentence. It is her averment in the affidavit in support that she was arrested on the 29/4/2015, took plea on the 14/5/2015 and on the 25/3/2019 sentenced to serve 15 years imprisonment.

It is her averment that the court failed to take into account the three years and 10 months she was in custody in the judgment.

4. I have considered the sentence delivered by the Hon. Justice Gitari –J- on the 25/3/2019.

5. The Learned Assistant Director of Public Prosecutions Mr. Ashimosi was not opposed to the application if the court made a finding that the time spent in custody was not considered.

Section 362 of the Criminal Procedure Code, provides that the High Court may call for and examine the records of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness legality or propriety of any finding and as to the regularity of any proceedings of any such Subordinate Court.

6. The Supervisory Powers are intended to enable the High Court use them in grave cases where the Subordinate court or tribunal acts without jurisdiction. Or in excess of it, or in violation of principles of natural justice – **Criminal Revision No. 277/2015 George Aladwa Omera –v- R(2016) eKLR.**

Section 364 of the Criminal Procedure Code grants the High Court revisionary powers and jurisdiction over the subordinate courts.

7. Further, **Article 165(6) and (7) of the Constitution** confers the High Court supervisory jurisdiction over Subordinate Courts and over any person, body or authority exercising judicial or quasi –Judicial function but not over a superior court.

8. To that extent, it may call for the record of any proceedings before any court or person and may make any orders or give any direction it considers appropriate to ensure the fair administration of justice – See Section 362 of the Criminal Procedure Code. Waweru J in **Republic – vs- Samuel Gathuo Kamau (2016) eKLR** observed that:-

“..... Supervisory jurisdiction is exercised as maybe provided by law- by way of appeal, revision etc- it does not include on any perceived power to make a decision on behalf of a subordinate court which that court ought to make As for

revision, the supervisory jurisdiction is exercised in respect of findings, sentences, orders and regularity of any proceedings – Article 165(7) of the Constitution, and Section 362 and 364 of the Criminal Procedure Code.”

9. By and large, the supervisory jurisdiction is accorded to the High Court, from decisions and proceedings of subordinate courts.

There is no legislation, to the best of knowledge and understanding, that confers criminal supervisory jurisdiction of the High Court to itself or to any superior courts – this position was taken by the Court of Appeal in **Criminal Revision No. 218/2015 Ahamad Abolfathi Mohammed & Another –v- R (2018) eKLR** when the Learned Judges observed that Section 346 Criminal Procedure Code, does not confer jurisdiction to the court to review its own orders, save to correct errors or amend defects – see also **Criminal Revision No. 215/2018 R –v- John Wambua Munyao & Others, and Cr. Revision No. 4/2020 David Kisui Kieti –v- R (2020) eKLR**.

Section 364 (4) of the Criminal Procedure Code on the powers of the High Court provides;

Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction;

364 (5) –

When 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.

10. It is therefore clear that the High Court has no jurisdiction to entertain an application for revision of its own criminal Judgment or order, on a matter that the party seeking for revision could have appealed to the Court of Appeal in terms of Section 379 (1) Criminal Procedure Code.

11. I have stated earlier in this ruling the applicant’s concerns, and grounds of the application, that the Judgment of the trial Judge (of High Court) did not take into account the period the applicant spent in custody in the final judgment.

12. The remedy, in my view lies in an appeal, to the Court of Appeal in terms of Section 333(2) Criminal Procedure Code which provides;

13. Subject to the provisions of Section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this code

14. Provided that where the persons sentenced under Subsection (1) has, prior to such sentence been held in custody. The sentence shall take account of the period spent in custody.

15. The above was well stated by the Court of Appeal in the case **Ahmad Abolfathi Mohamed & Another (supra)** and **David Kisui Kieti (Supra)**.

16. Consequently, and for the foregoing, I find and hold that this court has no jurisdiction conferred upon it, either by the Constitution or legislation to revise its own Judgment in the manner of the orders sought by the applicant in the Revision application dated 13/1/2020.

It is dismissed.

Orders accordingly.

Dated, Signed and Delivered at Kerugoya this 19th day of November, 2020.

J. N. MULWA

JUDGE