



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL REVISION NO 8 OF 2020**

**(From original conviction and sentence in Criminal Case No. 226 of 2017 of the Senior Principal Magistrate's Court at Wang'uru.)**

**SUSAN MUENI Alias VIRGINIA WAMBUI MUNYIRI.....APPLICANT**

**– VS –**

**REPUBLIC.....PROSECUTION**

**RULING**

1. The applicant Susan Muenii alias Virginia Wambui Munyiri is an 84 years old woman serving a Six years imprisonment upon conviction in Wang'uru SPMCC Criminal Case No. 226 of 2017 in six offences ranging from obtaining money by false pretence to making false documents without authority Contrary to **Section 389, 357, 353 and 382 of the Penal Code**.
2. One year imprisonment was meted on her for each of the six separate transactions on the 12/01/2018. She has served close to two years in prison.
3. Her first application for revision was dismissed by the court on the 18/6/2019. She has now come to court seeking the same orders grounded on **Section 362 and 364 of the Criminal Procedure Code**, and put forth spirited mitigation grounds; that she is a first offender, that the period she spent in custody remand was not considered during the sentencing, and that she is of ill health of hypertension and is elderly. She thus seeks that the court do consider and order that the one year sentence on each of the six offences be reviewed and ordered to be served concurrently, and that the period she has been in prison be sufficient punishment.
4. I have stated earlier that the elderly woman, who appeared before me could not hear properly due to her advanced age and ill-health.
5. From the short narrative above, this court cannot and has no jurisdiction to further hear the Revision application for the second time, on the same grounds.
6. The Learned Assistant Director of Public Prosecution Mr. Ashimosi did not object to the application.
7. We are living in dangerous times due to the Covid -19 pandemic. The elderly and those with underlying conditions are worse off in prison, and crowded unclean places. Recognizing the threat that the pandemic has caused and continues to, more so in crowded spaces, prisons included, the National Council on the Administration of Justice (NCAJ) issued a circular on the 15/3/2020, in its plan to combat the threat of Covid -19 entitled Administrative and Contingency Management Plan to Mitigate Covid -19 in Kenya's Justice Sector. In part it states;  
  
**“8. Judges in all stations will in the meantime review the deserving cases already identified by Authorities and issue appropriate revision orders in an effort to decongest the prisons ----“**
8. Following the said circular, the Honourable the Chief Justice issued directives to the courts to decongest the prisons by review of deserving cases.
9. Pursuant thereof, courts moved quickly and decongested, and continue to decongest prisons to curb the runaway pandemic that has threatened to cut short lives of the most vulnerable, including the elderly.  
  
Numerous convicts have since been released from prison. I shall state a few.
10. **In Cr. Case No. 32/2020 - Gordon Owour Lamek –v- R (2020) eKLR** the convict was released due to advanced age.

11. In **Petition No. 60/2019 - Wallace Chege Waihinya –v- Director of Public Prosecutions (2020) eKLR**, the convict who was 79 years old and sickly was released. He had been sentenced to serve 15 years’ imprisonment.

12. In **Criminal Revision No. 28/2020 - Dicksons Omondi Onyango –v- R (2020) eKLR** was also released with a view to decongest the prison.

13. In **Petition No. 140/2018 - Abdul Raliaman Bakori –v- Director of Public Prosecution (2020) eKLR** was likewise released.

14. I have considered the petition by the elderly woman. She has already served about two years out of the six. She is 84 years old and as I have stated, cannot hear well unless at a very close range. She is most vulnerable being in a congested prison at the Embu Women Prison, the only prison for Women in the Mount Kenya Region. In my view she has been punished enough for her sins. She is harmless at her age. Her continued stay at the prison will serve no purpose.

15. Upon my unfettered discretion which ought to be exercised judiciously, which I hereby do, I am persuaded to release the applicant not only to decongest the Women prison at Embu but also upon consideration of the age and health concerns of the Senior citizen.

16. An order is thus issued directing the release of the applicant from the Embu Women Prison forthwith, unless otherwise lawfully held.

Orders accordingly.

**Dated, Signed and Delivered at Kerugoya this 17<sup>th</sup> day of December, 2020.**

**J. N. MULWA**

**JUDGE**