



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL REVISION NO. E001 OF 2020

DANIEL KORIR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 739 of 2020

of the PM's Court at Sotik – J. Omwange - SRM)

RULING

1. This revision has come to me through a Notice of Motion dated 22nd October, 2020 and filed on 26th October 2020 by the firm of Tengekyon & Koske Advocates. It is brought under Section 362 of the Criminal Procedure Code Cap 75 Laws of Kenya.

2. In the application filed under Certificate of Urgency, the applicant sought the orders reproduced verbatim as follows:-

(a) **THAT** the file in Sotik Principal Magistrate's court **Criminal Case number 739 of 2020 Republic Versus Daniel Korir** be recalled for the purposes of the review of the sentence.

(b) **THAT** the sentence of twelve (12) months imprisonment be reviewed and substituted by the imposition of a non-custodial sentence and/or reasonable fine which this Honourable Court may deem justified and fit in the circumstances.

(c) **THAT** this Honourable Court be pleased to release Applicant/accused forthwith.

3. The Applicant Daniel Korir states in his supporting affidavit that he was found guilty and sentenced to 12 months' imprisonment for the offence of being in possession of alcoholic drinks without a licence contrary to Section 27 (3) as read with Section 27 (4) of the Alcoholic Drinks Control Act No. 4 of 2010. The Applicant states in numerous averments that he was remorseful, was a first offender, and the sole breadwinner of his family where both his children and siblings depended on him.

4. The Criminal Procedure Code vests in the High Court wide powers in its revision jurisdiction. These are contained in Section 362 through to 366 of the Criminal Procedure Code (Cap.75). Section 362 specifically provides as follows:-

“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 Aor passed, and as to the regularity of any proceedings of any such subordinate court”.

5. **Section 164** details how the revision jurisdiction should be exercised. It provides 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 a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;

(b) in the case of any other order than an order of acquittal, alter or reverse the order.

