



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO.129 OF 2018

JAMES KINEGENI BASILIO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No. 114 of 2015 of the Principal Magistrate's Court at Chuka).

RULING

1. **JAMES KINEGENI BASILIO**, the applicant herein was charged with the offence of manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code** vide **Chuka Principal Magistrate's Court Criminal Case No. 114/2015**.

The particulars were that on 1st February, 2015 at Ncharichu village, Ikuu Sub-location, Tharaka Nithi County he unlawfully killed Justus Munene Mukindia. The record of proceedings from the court below show that the applicant pleaded guilty to the offence and was convicted on own pleaded and sentenced to serve 6 years imprisonment.

2. It is also apparent that the applicant did prefer an appeal against the sentence in this court vide Chuka HCCR Appeal No. 1 of 2015. The appeal was disallowed by this court on 17th March, 2016.

3. The applicant has now moved this court through a Notice of Motion dated 11th July, 2018 asking for a reversal of the sentence meted out against him on the following grounds:-

- (i) That he was a first offender.*
- (ii) That he was intoxicated when he committed the offence.*
- (iii) That he is a breadwinner of his family.*
- (iv) That he has since reformed and transformed.*
- (v) That he should be considered for non-custodial sentence.*

4. This court has considered this application and the grounds upon which it has been made. I have noted a favourable report from the correctional facility where the applicant serves his sentence. It is commendable that the applicant has learnt useful skills in prison that will endear him well once he gets back to the community and the society at large. However it is clear that this application contravenes the law and in particular **Section 364(5)** of the **Criminal Procedure Code**. The applicant preferred an appeal and this court rendered itself on the appeal. The applicant cannot come back to the same court for a review because if he was dissatisfied with this court's decision on his appeal, he should have appealed against it in the Court of Appeal.

This application is therefore improper and furthermore I find that the trial court duly exercised its discretion under **Section 26(2)** of the **Penal Code** in handing 6 years imprisonment instead of life imprisonment which is the maximum sentence provided under **Section 205** of the **Penal Code**.

The applicant is therefore best advised to continue with the transformation and continue acquiring other useful skills to help him be useful to himself, his family and the society at large once he finishes his term of imprisonment. For now this application for the aforesaid reasons is disallowed.

Dated, signed and delivered at Chuka this 29th day of January, 2019.

R. K. LIMO

JUDGE

29/1/2019

Ruling signed, dated and delivered in the pen court in presence of applicant in person and Momanyi for State/Respondent

R.K. LIMO

JUDGE

29/1/2019