



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(Coram: Odunga, J)

CRIMINAL REVISION NO. 29 OF 2019

ANN MBULA KIMATU.....APPLICANT

=VERSUS=

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein, **Ann Mbula Kimatu**, was on 18th February, 2019 convicted of the offence of **Trafficking in Narcotics Drugs Contrary to section 4(a) of the Narcotics Drugs and Psychotropic Substances Control Act**, No. 4 of 1994. The facts were that on 8th February, 2019 at around 1030 hours at Mjini Area, Machakos sub-county within Machakos County, she was found trafficking narcotic drugs namely 10 kilogram of cannabis of street value Kshs 30,000.00 by selling it to customers. She pleaded guilty, and was sentenced to serve three years imprisonment.

2. In this revision the applicant seeks a review of the sentence. From the Probation Officer's Report, in 2001, the applicant was convicted of a similar offence and was sentenced to 10 years imprisonment. Again in 2012, she was arrested for a similar offence though that time she was not convicted. While in prison, the applicant seems to have acquired tailoring skills and when she left prison she was given a sewing machine but has not been using the same. Her family however vouched for a non-custodial sentence for her and undertook to help in her rehabilitation. It was indicated that her home report is positive and that she is remorseful. The local administrative officers were also of the view that the applicant though a repeat offender may be given a second chance considering the fact that she has young children to take care of. From the said report the applicant's youngest child in 10 months old while the eldest is 25 years old and is independent.

3. The report concluded that the offender is fit for rehabilitation through non-custodial sentence.

4. As regards the sentence, the Supreme Court in **Francis Karioko Muruatetu & Another vs. Republic**, Petition No. 15 of 2015 that:

“In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in *Dahir Hussein v. Republic Criminal Appeal No. 1 of 2015; [2015] eKLR*, where the High Court held that the objectives include: “deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.” The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.

4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.

5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community's condemnation of the criminal conduct."

The sentencing policy states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict."

5. In this case, it is true that the offence with which the applicant is charged cries loud for retribution, deterrence, rehabilitation, community protection and denunciation. The drugs menace in this country is creating havoc in the lives of young men and women hence depriving the nation of the much needed human resource. It is a menace which must be fought and be fought decisively. Therefore, a message ought to be sent to the applicant in clear and in no uncertain terms that what she is engaging in is wrong and she ought to desist from it; that it is an offence against the community and the community requires to be protected from it; that what she is engaging in as a short term means of earning a living has dire consequences to the lives of the people she is exposing them to. The applicant does not seem to have learnt any lessons from her previous conviction. While in prison, in order to rehabilitate her, she was equipped with knowledge, skills and tools that ought to have enabled her earn a decent and honest living but she does not seem to care to make use of them. Instead she has resorted to an easy way of earning a living at the expense of other people by dispensing dangerous drugs to them without caring about their effects on such people. This court appreciates that these are hard economic times but engagement in crime is not an option.

6. I appreciate that under Article 55(4) of the Constitution a child's best interests are of paramount importance in every matter concerning the child and this Court should not be seen to be sacrificing the interest of the children in order to appease the spirits of the society. In this case, however, while the court empathises with the children of the applicant, the probation report reveals that the applicant herself has history of alcohol, cigarette and cannabis use. Unless the applicant changes her character, her children themselves are clearly in need of protection which she has shown that she is not ready to afford them despite the efforts by the society to come to her aid. She is simply not being a role model to her family at all.

7. The applicant's situation is reminiscence to the story told in Luke Chapter 16 verse 27-30 where the rich man is reported to be pleading with Abraham to send Lazarus to his father's house on the basis that if his brothers see someone from the dead they would repent. However, Abraham retorted that if they do not hear Moses and the prophets neither will they be persuaded even if one was to arise from the dead. Similarly, in this case if the applicant did not learn anything from her previous long incarceration, how does she expect this court to believe that she will learn from such a harmless sentence as a non-custodial one? Accordingly, I decline to interfere with the sentence. If the applicant proves that she is of good behaviour in prison she will of course be entitled to remission.

8. In the premises this application fails and is dismissed. For avoidance of doubt the sentence will run from 8th February, 2019.

9. It is so ordered.

Ruling read, signed and delivered in open Court at Machakos this 28th day of November, 2019.

G V ODUNGA

JUDGE

In the presence of:

The Applicant in person

Miss Mogoi for the Respondent

CA Geoffrey