



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL REVISION NO. 328 OF 2018**

**(Revision arising from orders made on 19<sup>th</sup> November 2018 in Vihiga**

**Criminal Case No. 5057 of 2018 Republic vs. Evans Aywa**

**by Hon. WK Cheruiyot, Resident Magistrate)**

**EVANS AYWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The court file in respect of Vihiga SPMCCRC No. 5057 of 2018 was placed before me vide an application dated 5<sup>th</sup> December 2018, for revision of orders made on 19<sup>th</sup> November 2018, by Hon. WK Cheruiyot, Resident Magistrate. The applicant herein was arraigned before Hon WK Cheruiyot, Resident Magistrate on the same day, 19<sup>th</sup> November 2018 to take plea on charges contained in a charge sheet dated 19<sup>th</sup> November 2018, which charged him with defiling a minor of 16 years.

2. The record reflects that the said charges were read to the accused on the said date and he pleaded guilty to them. When the facts were read out to him, he responded that the facts were correct. At mitigation he said that the complainant had told him that she had dropped out of school at Form 3 because of lack of school fees, and that she was 17 years old. He added that they had been friends for a while and had agreed. He pleaded for forgiveness.

3. In his Motion dated 5<sup>th</sup> December 2018 he says that he was confused at the time that he took plea and was not in his proper sense of mind. He has now come to his senses and wishes to change plea. He argues that it was his first time to be arrested, had spent the night in a police cell where he was molested by his cellmates, and he did not wish to go back there. He said that he did not understand the implications of the charges. He asserts that he was not involved with the child in question. He also pleads that the sentence was extremely harsh and he had been framed up.

4. Revision of orders made by the trial court is a discretion that the High Court exercises to correct any errors or irregularities or illegalities or improprieties committed by the lower court. It is akin to the civil remedy of review of a court's order or judgement on account of error on the face of the record.

5. The power of revision is stated in section 362 of the Criminal Procedure Code, Cap 75, Laws of Kenya in the following terms:

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

6. A clear reading of that provision will reveal that it is about what the subordinate does wrong with regard to its finding or sentence or other order that it makes passes or records. It is not about mistakes or errors that parties themselves make, which then lead to the making of an order or sentence by the court.

7. In this case the applicant is not saying that the orders made by the court were irregular or incorrect or improper or illegal. In short, he is not saying that the court made any error at all on its part. Instead, he says the problem was with himself. He ought not to have pleaded the way he did, and he did so because he was confused for he was not in his proper frame of mind.

8. I have scrupulously perused through the record of the trial court. I have noted no irregularity or impropriety or illegality or incorrectness in the manner the proceedings were conducted or recorded that day, nor in the orders that were made. The court followed the laid down procedures. The applicant was convicted upon his own plea of guilty, and at mitigation he went on to concede that he had had a sexual relationship with the child in question. What he is now doing is an about-turn after tasting life in prison.

9. There is no error on record for me to revise under sections 362 and 364 of the Criminal Procedure Code. If the applicant was unhappy with the sentence he should have appealed against it. Revision is not available on the grounds advanced in his application. I accordingly dismiss the Motion dated 5<sup>th</sup> November 2018. The lower court file shall be returned to the relevant registry at Vihiga.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2019**

**W. MUSYOKA**

**JUDGE**