



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CRIMINAL REVISION NO. 134 OF 2018

(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 454 OF 2015 OF THE PRINCIPAL MAGISTRATES COURT AT CHUKA)

MOSES MUGAMBI NJIRU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. MOSES MUGAMBI NJIRU, the applicant herein has moved this court through a Notice of Motion dated 21st July, 2018 brought under the provisions of **Sections 362 and 364** of the **Criminal Procedure Code** for the following orders;

- (i) That this court be pleased to call for and examine the lower court's file No. Chuka Principal Magistrate's court Criminal Case No.455 of 2015.
- (ii) The sentence passed against him be reviewed.

2. The grounds upon which the applicant is seeking review of his sentence are listed as follows:-

- a. That he was charged with the offence of handling stolen good contrary to Section 322 (1) of Penal Code.**
- b. That he is the sole bread winner of his family.**
- c. That he has a daughter in secondary school who depend on him for fees and upkeep.**
- d. That he is requesting for leniency in the form of a non-custodial sentence.**

3. The applicant has supported his application with an affidavit sworn on 6th September, 2018. He has reiterated the above grounds in his quest to have the sentence meted out against him reviewed.

4. This court called for the lower court file No. Cr. 454 of 2015 pursuant to the provisions of **Section 362** of the **Criminal Procedure Code** in order to satisfy myself with the legality, correctness, propriety and the regularity of not only the proceedings in that lower court case where the applicant was charged and convicted. The proceedings reveal that the applicant herein was charged with;

- (i) Burglary contrary to **Section 304 (2)** of the **Penal Code** with alternate charge of handling stolen goods contrary to **Section 322(1)** as read with **Section 322(2)** of the **Penal Code**.

5. The proceedings from the lower court reveal that the applicant was found guilty of the alternative charge after full trial, convicted and sentenced to serve 6 years imprisonment.

6. The applicant has now applied for revision of his sentence asking for leniency. The applicant has told this court that he has only served 6 months of his sentence which he says has now been reduced to four years in remission. I do not find that the applicant has reformed enough as there is no evidence to show that he has learnt new useful skills in prison to help him transform and abandon crime.

I also find that under the provisions of **Section 322(1)** upon which the applicant was charged and convicted, provides for a maximum sentence of 14 years imprisonment. The trial court exercised its discretion under section **26(2)** of the **Penal Code** upon considering mitigating circumstances and sentenced the applicant to 6 years imprisonment.

At this stage as I have observed above I do not find any basis to interfere with the discretion of the learned trial magistrate. There is nothing to suggest that the trial court failed to take into consideration a relevant factor in mitigation or took into consideration an irrelevant factor. The applicant is advised to go on with his transformation in the correctional facility until he fully transforms and acquires important skills which will help him and his family when he eventually gets out upon completion of his sentence.

For now I find no merit in his application dated 21st July, 2018. The same is disallowed for now but he is at liberty to move this court at appropriate time.

Dated, signed and delivered at Chuka this 31st day of October, 2018.

R.K. LIMO

JUDGE

31/10/2018

Ruling dated, signed and delivered in the open court in presence of Machirah for state and applicant in person.

R.K. LIMO

JUDGE

31/10/2018